WAYNE: All right. Good afternoon and welcome to the Judiciary Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County, and I serve as Chair of the Judiciary Committee. We will start off by having members of the committee and staff do self-introductions, starting with staff.

MEGAN KIELTY: Megan Kielty, legal counsel.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

DeBOER: Hi, everyone. My name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

BLOOD: Good afternoon. Senator Carol Blood, representing District 3, which is western Bellevue and eastern Papillion, Nebraska.

RICK HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeKAY: Barry DeKay, District 40, representing Holt, Knox, Cedarr, Antelope, northern part of Pierce and most of Dixon County.

WAYNE: Also assisting us are committee pages, Logan Brtek from Norfolk, who is a political science and criminology major at UNL, and Isabel Kolb from Omaha, who is a political science and pre-law major. Don't go to law school. This afternoon, we will be hearing five bills and they will be taken up in the order that is listed outside the room. On the tables to the side of the room next to that column, you will find a blue testifier sheet. If you are planning to testify today, please fill one out and bring it to, to the pages so we can have accurate records. If you do not wish to testify but want your presence to be known and your position on a bill to be known, you can fill out the gold sheet over by the same column. Also, I will note that it's the Legislature's policy that all letters of record must be received by the committee by noon the day prior to the hearing. Handouts, please make sure you hand them to the page who can make sure we have ten copies. If you don't, we will make sure we give you additional copies. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from any supporters of the bill, then followed by those in opposition, followed by those speaking in neutral capacity. The introducer of the bill will then be given an opportunity to close. You may see senators who are not here come and go. If you don't know,

we're having hearings in other-- other hearings in other rooms so senators may be leaving to go to a different hearing. We will also be using the three-minute light system. So when you come up, please spell and state your name and spell those for the record. Then the three minutes will begin and you will be able to see with the green light. Then when it turns yellow, we'll have one minute left and when it's red, we will wrap up your thoughts. I would like to remind everyone, including the senators, please turn off your cell phones or put them on vibrate. And we will begin today's hearing with LB49. Senator Dungan.

DUNGAN: Thank you. Good afternoon, Chair Wayne and members of the Judiciary Committee. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent the people of northeast Lincoln in Legislative District 26. Today, I'm introducing LB49. Colleagues, growing up in Nebraska, I've noticed there's always a couple of weeks or days in February where the temperatures get up to about 50 degrees or 60 degrees and we start to think it's spring and then inevitably there is a cold snap. Some call that false spring, second spring, third spring. It happens multiple times and then all of a sudden, the temperatures plummet all the way back down and here we are in winter yet again. Today, although it's very, very cold out, the sun is still shining, showing that even on the coldest of days, I think we can all benefit from the sun. We know there's an ever-growing need for renewable and green energy. Solar and wind energy can supplement or provide a viable alternative to domestic and imported fossil fuels. Moreover, solar and wind energy are virtually inexhaustible, highly cost effective and good for the environment. No one worries about solar energy polluting the groundwater, harming air quality and things such as that. As such, there is a need to enhance and protect access to these energy resources should Nebraskans try to utilize them. Currently, however, Nebraskans face an impediment to choosing solar energy. One of those is that homeowners associations or other similar associations and sometimes property owners can restrict and prohibit inhabitants from installing solar panels. LB49 would disallow these entities from barring the installation of solar energy collectors and prevent them from blocking direct sunlight to solar panels as-- at least as a consideration for zoning. Furthermore, at present, there is no recompense for Nebraskans who are unduly prevented from accessing solar energy in this way. LB49 rectifies the situation by allowing recourse through civil action. It's important to understand that in no way does LB49 change the approval process for exterior modifications, except that solar panels cannot be explicitly and contractually

prohibited. In this way, LB49 grants Nebraskans greater freedom of choice without significantly interfering with HOAs or other owner entities. If you ask me, it's a win-win situation. It's a small change for big gains. And while it's bitterly cold outside today, we can still appreciate the sunshine and those individuals who decide to have solar panels on their houses can directly benefit from them as well. I also passed out an amendment. You'll see that. It does a couple of things. One of them substantive; one of them is simply cleanup. The first part of the amendment specifically says that this is not directed, nor should it be interpreted to invalidate contracts that have to do with conservation land easements. I spoke with individuals who work with conservation land easements and they were concerned that some of their contracts, which go back 100 years old, don't have severability clauses and things such as that. So they had concerns that the language in this bill would effectively nullify conservation land easements, which is not an intention that I had when I wrote this bill. The second part of the bill just modifies some of the formatting to make it clearer. That's not a substantive change. I'm happy to answer any questions anyone might have. I will say that I have a bill up in Appropriations here very soon that I want to make sure I can open on there as well. I'll try to stick around for closing, but if I am gone for closing, that's why.

WAYNE: So what you're saying is Appropriations giving you money is more important than--

DUNGAN: That is not what I'm saying.

WAYNE: Oh, OK. I was just checking.

DUNGAN: And I would apologize if it came off that way.

WAYNE: No, no, you're fine. I would go to Appropriations too. Any questions from the committee? Senator DeKay.

DeKAY: Thank you, Senator Wayne. Thank you, Senator Dungan. Does this just apply to houses or does this apply to large solar arrays that cities and towns are proposing putting in?

DUNGAN: So that's a good question. What this gets at-- it's specifically on page 3, line 27, subsection (2)-- says any instrument governing or regulating the ownership or use of real property, which purports to prohibit or outright restrict the installation of solar panels, so on and so forth. So we're talking about real property. But

yeah, any instrument that is governing or regulating the ownership of that real property cannot specifically prohibit or purport to restrict the use of solar panels. And I think you actually bring up a good point here that I want to highlight. One of the questions that I've received a lot about this bill is whether this sort of stops or prohibits landlords or other individuals from being able to dictate what happens on the property they own. I don't believe it does. The way that I intended this language to be written is that a lease, for example, can still have a provision in it that says a tenant cannot build on this property or further improve the property without prior approval of the landlord. That's still permissible. What it cannot do is specifically say you cannot put solar panels on the property. And the reason we're trying to make it that way is we feel as though there's too many covenants right now, specifically in some homeowners associations, agreements and things like that, which you'll hear about from testifiers after me, that specifically prohibit these. And we want to be incentivizing Nebraskans to utilize these on their personal property or on homes or apartments if it's something they can benefit from. But if a landlord, for example, or homeowners association wants to say that you cannot build on or improve on your property without prior approval from the HOA or from the landlord, they can do that. It just can't specifically cut out solar panels.

DeKAY: So how do-- how would this work in conjunction, say, with their local power company like OPPD, LES, NPPD, whoever on the days that the sun isn't shining? If it's cloudy, how does that work into the rate structures, bars, paying for the infrastructure that is being used and the generation-- the electricity that's coming into those apartment homes and whatever on a days that the-- so that is fair and equitable for everybody involved?

DUNGAN: I think that's a really good question and I know that's a question that comes up oftentimes with solar energy in general. I'll admit to you that I'm not probably the best person to answer that direct question as it pertains to sort of the ratepayer rates and how they're modified. I do know that we're talking about different kinds of solar here, right? So there are some solar panel arrays that, like you talked about, collect and then put back into the grid and that can affect the overall energy. There's also a vast majority of the ones that we're talking about here, which are solar panels or energy-collecting devices that directly go towards the home or the unit that they're attached to and don't give back into the, into the general grid. And so I don't have a direct answer for you because I don't know the exact breakdown of the percentages of ones that go

directly to the home versus ones that go back into the grid. But I'd be happy to speak more with some of the power companies, LES and find out the effects this might have and get back to you on that. There might also be some of them here today and they might be able to answer that. But I-- to be honest, I don't have a specific answer for you.

DeKAY: I am-- yeah, I'm pretty sure there would be somebody from either side of this issue that would be able to answer that going forward. And I just wanted to bring it up so people would be able to respond to that coming forward.

DUNGAN: I think that's a great question and I appreciate that.

DeKAY: Thank you, sir.

DeBOER: Are there other questions for this testifier-- for this testifier-- for Senator Dungan?

DUNGAN: I'll answer to whatever. It's fine.

DeBOER: I don't see any. Thank you, Senator Dungan. We'll hope that we get through this and you can stay and close.

DUNGAN: Thank you.

DeBOER: First proponent testifier.

DEBRA NICHOLSON: Thank you for the time to hear my testimony. My name is Debra Nicholson. I am in District 29 in Lincoln. I am testifying today on behalf of the Lincoln Chapter of Climate-- Citizens Climate Lobby, which is a nonprofit, nonpartisan, grassroots organization focused on policies that will address climate change. CCL Lincoln supports the right of property owners to install and use solar panels without interference from homeowners associations or similar regulatory bodies. Solar panels on residential roofs are extremely efficient and effective for providing electricity to our homes and fueling our electric vehicles. I recently got bids for installing solar panels on my roof. It's expensive initially, but I believe it's the right thing to do and in time, solar will yield a positive return on my investment. As a retired city planner, I do believe regulation of solar panels can avoid conflicts between neighbors. For example, homeowners should have the right to install solar panels on their roofs, but to maintain a residential neighborhood character required step-back from right-of-way and lot coverage limitations should apply. This bill also proposes to authorize solar permits that would prevent

vegetation from blocking direct solar access. Shade trees and windbreaks, however, moderate climate, keeping our homes and neighborhoods comfortable and inviting. Trees and other vegetation are also important bird and insect habitat and a source of food. I question whether limiting vegetation for solar access in residential areas is reasonable. I have tried to minimize the use of fossil fuels in my entire adult life. Back in 1973, when I was 20 years old, the Middle East stopped selling us oil and we Americans quickly had to find a way to address the 10 percent decrease in our fuel supply. Presidents Nixon, Ford and Carter responded to the crisis by establishing the Department of Energy and pushing an agenda of efficiency and conservation. Today, 50 years later, we can solve our energy problems without requiring us to sacrifice creature comforts or giving up our cars. Just when we can-- the world cannot tolerate any more carbon emissions from burning coal, oil and gas, solar and wind can take their place. I hope that Nebraska will embrace, support and benefit from clean energy. I guess that's all I'll say. I'll stop there. Thank you very much.

WAYNE: Thank you. Any questions from the committee? Can you spell your name for the record?

DEBRA NICHOLSON: D-e-b-r-a N-i-c-h-o-l-s-o-n.

WAYNE: Thank you. Senator DeKay.

DeKAY: Thank you. Thank you for being here today.

DEBRA NICHOLSON: Thank you.

DeKAY: Quick question: with different homeowners associations and different cul-de-sacs and stuff in the town, how-- if it's not in compliance, how do you work around those issues where you-- I mean, when they're dealing with everything from types of shingles to everything else and then you're wanting to put a solar panel on top of those? How do you work through those issues within the homeowners associations going forward?

DEBRA NICHOLSON: Well, I have a background in city planning. We did not deal with homeowners associations. They were a separate entity, regulatory body. But I think the city-- any city jurisdiction in Nebraska could figure out a way to, first of all, allow solar panels and then to provide specific regulations on characteristics. For instance, you don't really want it right up by the sidewalk. You want

it maybe behind-- you know, not in the front yard and you don't want them too close to the property lines and maybe you don't want them to fill the complete-- you know, the whole yard. You just, you-- and-- but they can limit the amount of coverage. So I think that would be a way of addressing it. And homeowners associations could, could use the same sort of requirements, I would say. And that way, it would allow people to use their private property for solar and also, you know, make sure the neighborhood character isn't-- is preserved. Does that answer your question?

DeKAY: Yeah, from, from the city-- from the-- I guess from the commercial side of it, you know, I was talking more about the residential side where they have different-- specifics on type of shingles, to brick/wood houses, whatever. That's where I was trying to make sure that everybody was in compliance with the same regulations of their charters.

DEBRA NICHOLSON: Wll, that's-- and, and the purpose of this bill, as I understand it, is to say-- make sure, make sure that homeowners associations are flexible enough to accommodate solar panels.

DeKAY: Appreciate that. Thank you.

DEBRA NICHOLSON: Yes.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

DEBRA NICHOLSON: Thank you.

WAYNE: Next proponent. Welcome.

LORRIE BENSON: Senator Wayne and members of the committee, I appreciate the opportunity to be here. My name is Lorrie, L-o-r-r-i-e, Benson, B-e-n-s-o-n. I'm here on behalf of and as chair of the climate action team at First Plymouth Congregational Church in Lincoln. We support LB49. In particular, we support prohibiting restrictions on installation of solar arrays on homes and other properties. Further, we support removing any such restrictions currently in existence. We understand-- and I'll add, I personally understand as somebody who's practiced real estate and is a former city and county attorney, that there are, there are laws and traditions regarding the ownership of property, both individually and in groups, as-- such as homeowners associations to manage and use their property as they see fit. But those freedoms are not absolute and have changed over the years as the

world has changed. For example, no homeowners association today would be permitted to ban a member of a particular race or religion from buying a property in the neighborhood, something that was once common. You can build a style of home or commercial building that you wish, but it must be in compliance with zoning ordinances and building codes. If you wish to change something about your structure, you may have to meet building codes that are more stringent than when you first acquired the property. Today, the prohibitions on adding solar array-- a solar array to a home or other structure need to be as outdated as those prohibitions on race or religion. Solar panel, panels are desirable to individuals who want safe, reliable and inexpensive electricity, as well as those who want to reduce their carbon footprints. As a society, we benefit from such installations because they reduce the need to add more capacity to electric-- by electric utilities; first, by reducing the need for electricity by some customers, and second by adding to electricity available in the community through net metering. Many in Nebraska are concerned about taking ag land out of production and using it for solar or wind farms. The more solar we put on houses and other buildings, the less we'll need ag land for wind and solar. Now is the time to remove these restrictions because the costs of solar panels and storage continues to drop. At the same time, there are significant financial incentives available to property owners. For my group, as people of faith, we believe that we have a responsibility to address climate change as quickly as possible to help protect people and the planet. Removing barriers to solar installations is an important step toward that effort. Thank you for considering my comments.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Proponent. Welcome to your Judiciary Committee.

KENNETH WINSTON: Thank you, Senator Wayne. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Kenneth Winston, K-e-n-n-e-t-h W-i-n-s-t-o-n, and I'm appearing on behalf of the BOLD Alliance in support of LB49. The BOLD Alliance works to protect land, air and water from pollution, as well as protecting fundamental American rights to own property. We work with farmers and ranchers to protect their property rights. We support the protection of private property rights guaranteed by both the Constitution of the United States and the Nebraska Constitution. We support LB49 for two reasons. First, we support the right of property owners to use their property as they see fit, as long as it's for a lawful purpose and installing solar panels is clearly a lawful purpose. Second, it's

vital that more of our energy be generated by renewable sources and rooftop solar represents a vast potential resource for generating electricity. This can reduce our, our carbon footprint, increase the stability of the grid and keep-- help keep energy dollars in the state of Nebraska. In addition, more solar installations will provide good-paying jobs and generate economic benefits for the communities of Nebraska. We would respectfully request that LB49 be advanced for consideration by the Legislature. I'd be glad to respond to questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

KENNETH WINSTON: Thank you.

WAYNE: Next proponent. Proponent. Welcome.

LAUREL VAN HAM: Thank you.

WAYNE: Go ahead.

LAUREL VAN HAM: Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Laurel Van Ham, L-a-u-r-e-l, and my last name is two words, V-a-n H-a-m. I'm here to speak on behalf of Nebraska Citizens Climate Lobby. And because of my Christian commitment to tend and to keep creations. I want to start by acknowledging Senator Dungan for the herebys and thereofs and legalese that this bill plans to strike from the statute. That alone gives the bill of merit for us ordinary Nebraska citizens who try to understand what it is you do here in our state house. So my thanks to Senator Dungan. LB49 is, at its core, a bill about freedom for homeowners. As the statute already states, the use of solar energy and wind energy in Nebraska is of such importance to the public health, safety and welfare that the state should take appropriate action to encourage its use. I would argue that the generation of such energy in Nebraska is also essential to securing our economic well-being and passing on our famed good life to future generations. The world around us is rapidly transitioning from fossil fuels to a clean energy economy. I say "around us" because Nebraska is falling behind in making that transition. While we have tremendous potential to reap financial benefits by generating both solar and wind energy, we are sabotaging those opportunities with unnecessary regulations and even deliberate interference. Distributed solar energy, clean energy that's generated in close proximity to its point of use, is about as economical as you can get and it's an increasingly popular choice for homeowners. While

not impairing the use of zoning for the public good, this bill protects homeowners from unnecessary governmental regulations that would make their use of distributed solar energy impractical or even impossible. While not mandating use of distributed energy, it protects homeowners from HOA covenants that would limit their freedom to make benign decisions about use of their property. Solar energy, like Nebraska, may not be for everyone, but it makes good sense to keep that option open to anyone. Finally, we're all concerned about Nebraska's brain drain. The young people we have raised and educated here leaving our state because they want to live, work and raise their children in places that are preparing for the future rather than clinging to the past. We can encourage those young people to settle down right here by passing bills like LB49. This is a good bill, a forward-looking bill. It is about freedom. I urge you to support and advance it. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent.

MONI USASZ: Hello, Senator Wayne and the rest of the senators. Thank you for doing this day in and day out, listening to citizens and making laws. I'm Moni Usasz, M-o-n-i U-s-a-s-z. I support LB49 which would keep homeowners associations for prohibiting solar panels on homes. Adding solar should be a homeowner's decision. We need more solar in cities and towns, not less. Imagine each new subdivision with solar arrays on every roof. Imagine older homes retrofitted with solar. Renewable energy products do not have-- projects do not have to be clustered on public and private lands, far from cities. Adding solar in towns, cities and suburbs would add generation capacity without having to add more power lines and infrastructure. This would save us money. For example, how much power could be generated by slapping solar panels not only all over the west's vast parking lots, but also on its 21,000 big-box store rooftops? A reporter of High Country News Magazine recently asked that question and crunched the, crunched the numbers. There were 21,363 big-box stores, which could generate 31,035,098 megawatts from solar arrays and that could power 3 million homes. But what if the homes already have solar arrays? And then I've given you the information as to where you can find the article. Urban and suburban communities should be producing megawatts of solar rather than depending on renewable energy based in the countryside. It's only fair. LB49, which would allow homeowners to add solar without restrictions, is a small first step. Thank you for your time.

WAYNE: Thank you. Any questions from the committee?

MONI USASZ: Yes.

WAYNE: Senator DeBoer.

DeBOER: Thank you. Thank you for being here. You live in the city?

MONI USASZ: Yes, I live in the city.

DeBOER: And you think that we should contribute as much from the city as from the-- as we ask our neighbors out in the rural parts?

MONI USASZ: I would definitely say that. I agree.

DeBOER: Thanks.

WAYNE: Any other questions from the-- oh.

MONI USASZ: Sorry.

WAYNE: You're fine.

DeKAY: It's OK. There will be somebody else to ask a question to.

WAYNE: OK. Next proponent. Maybe not. Next proponent. OK, moving on to opponents. Opponents.

RICK McDONALD: My name is Rick, R-i-c-k, McDonald, M-c-D-o-n-a-l-d. I represent Metropolitan Omaha Property Owners Association in Omaha, Nebraska, and we're a group of 430 property owners in the Omaha area. We ask that you oppose this bill. This bill, if passed, gives the tenant too much control over the physical structure of the landlord's property by the installation of the solar panels. This bill gives the landlord no say in this matter as to how much damage might be done to the property from the installation. Landlords in the past have refused to let tenants install satellite dishes on the roof due to leakage from the screws driven into the roof. Installation of solar panels will make this problem even worse because of the massive structure of the solar panels. The tenants allowed to install these solar panels, who's responsible for the selection of the contractor who does the work? If the tenant chooses the lowest bid, the landlord has no authority. There could be all sorts of issues with the installation. If there are problems with the solar panels themselves or the installation, who's responsible for the damage? The tenant or the

landlord? If there's a hailstorm and the solar panels are damaged, who's responsible for the insurance coverage? The landlord or the tenant? If the solar panels are installed on an older existing roof, who's responsible for the removal of those solar panels and the reinstallation of those panels if the roof needs to be replaced? Who's going to inform the neighbor that his shade tree is blocking the sun from the solar panels and insist that he remove his tree? The landlord or the tenant? What's the landlord to do when the tenant moves out? Do the solar panels belong to the landlord or do they belong to the tenant? The bill is just one more in a large number of city, state and federal regulations that is driving landlords out of the business and cutting-- causing a shortage of affordable housing. By Omaha City Council's own words, Omaha is currently 7,000 rental units short just over the last several years and continues to grow. At this rate, the population in the shelters with homeless people will continue to grow as affordable housing drops. Thank you.

WAYNE: Any questions from the committee? Senator DeBoer.

DeBOER: Thank you for being here.

RICK McDONALD: You bet.

DeBOER: I don't think that the introducer intended it to cover landlords. That doesn't mean that that's not what the green copy says. So if we made quite clear that the landlord would still have the ability to say, no, no, we can prevent you from putting solar panels on, would that get rid of your objection?

RICK McDONALD: That would help. It does-- I believe it does state in here that if it's in the lease, same as with an HOA. So we don't want the tenant to overrule the landlord. The landlord needs to keep control of his property.

DeBOER: And if it was just about HOAs, but not about landlord-tenant and so the landlord could still control that, would that be OK with you?

RICK McDONALD: Well, we just, just assumed that the-- if the HOA has the authority, you know, with-- and their regulations and stuff== in the past it's been the HOA could overrule the city on something, but this would change that. But from our point of view with our landlord association, what we are really concerned about is the landlord-tenant relationship and the rental property.

DeBOER: OK. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Next opponent.Welcome.

JILL BECKER: Hello. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Jill Becker, spelled J-i-l-l B-e-c-k-e-r, and I appear before you today representing Black Hills Energy and Northwestern Energy in opposition to the bill. We don't have concern about the majority of the provisions of the bill. Our concern begins on page 2 of the bill, lines 11 through 15, the new language in the bill that would make solar energy and wind energy within the police powers of the state and its municipalities. And we just think that is a stretch in that it's really inappropriate to have those two energy sources within the police power of the state. We're not exactly sure what the intent of that is or really the ramifications of it, but we are opposed to that piece of the bill. And with that, I would be happy to answer any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

JILL BECKER: Thank you.

WAYNE: Next opponent.

ELAINE MENZEL: Good afternoon, Chairman Wayne and members of the Judiciary Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials appearing in opposition to LB49 at this point. I've not had an opportunity to review the amendments that Senator Dungan brought to your attention, but I believe most-- they had to deal with homeowners, but they perhaps would still address our concerns. I'm not sure. Our opposition is primarily related to additional responsibilities that the zoning administrators foresee that they may be engaged within. I think that they are something that could hopefully be easily remedied and through discussions with the Senator. And so with that, just wanted to let you know that we would be glad to work with the Senator and the committee and hoping to address those issues. If there's any questions, I would attempt to answer them.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

ELAINE MENZEL: Thank you.

WAYNE: Next opponent. Welcome.

DENNIS TIERNEY: Thank you, Chair Wayne and Senators. My name is Dennis, D-e-n-n-i-s, Tierney, T-i-e-r-n-e-y. LB49 creates a new right to direct sunlight that does not exist in the Constitution, Bill of Rights or any amendment to the Constitution. Senator Dungan wants to put into law that this new right cannot be abridged by the presence of any shade from outside the owner's or tenant's property. He stated that the tenants still would have to get permission to put up a solar panel to modify the building. However, that's-- so to my knowledge, there is nowhere stated anywhere in the bill. As it exists now, if a tenant wants to put a solar panel on a roof and the landlord has a tree that's shading the roof, the landlord could be sued by the tenant to remove the tree. If this-- this is absurd and extreme. It's been estimated that a tree shading a roof cuts air conditioning costs for the property by 5 to 15 percent. Trees also absorb greenhouse gases and provide oxygen. The bill does not have any provision for payment to a landlord for damages that could be caused by solar panel installation by the tenant. I have an apartment building that's been designated a historical landmark that has trees that shade it. As it exists now with this bill, the tenant could put up a solar panel on this building and that would immediately take the, the building off the historical landmark because it would significantly alter the appearance of the building. The thousands of dollars we put into this building to keep it a historical landmark, to keep it as an asset for the community would be negated because of this solar panel. But this bill also does not limit the so-called right to direct sunlight to just solar panels. There is no limitations on this right to direct sunlight. Someone could conceivably extend this right to be able to have direct sunlight come on their windows so they can have passive solar, passive solar heating or just enjoy the sunlight however they wish. Someone with SAD syndrome could force a landlord or their neighbor to remove shade trees to maximize their exposure to direct sunlight. Due to the lack of limits of this and what this new right entails, this bill is fraught with all sorts of potential unintended consequences. Senators, please reject this ill-considered bill. Thank you.

WAYNE: Any other questions from the committee? Questions? Seeing none, thank you for being here. Next opponent.

JUSTIN BRADY: Chairman Wayne and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association, for the Metro Omaha Builders Association and the Home Builders Association of Lincoln in opposition to LB49. All these three associations that I just listed off are not opposed to solar or wind. What they're looking at is a state or government's role is to lay out, you know, some parameters. When you start getting into HOAs and leases and agreements, those are private agreements and now you as a state are being asked to step in and void those private agreements. People bought homes, sold homes, they have leases, or it's even commercial space based on the neighborhood, the surroundings around them. And they went in with knowledge-- and by our state law, there has to be a disclosure of HOA. There, there-- you have to sign off on it. You have to initial that you received it. So what I didn't hear from anybody on the proponent side say is we didn't know it was there and we tried to put up a solar panel. It was yes, we knew it was there and now we would like to change it. And so from these associations agree-- understand is you're looking at trying to change the private agreement. And I'll give one example. So when you go back to talk about the direct sunlight. So if you had a development and I went in and built a ranch home and I put solar panels on it and one of you came along and were going to be my neighbor to the south side, say, and you wanted to put a two-story. If that directly impacts my sun on my roof ranch for my solar panels, you are prohibited from putting a two-story home on your new lot that you just built because it would violate this law. So for those reasons, we would ask that you not advance LB49. With that, I'll try to answer any questions.

WAYNE: Any questions? Senator DeKay.

DeKAY: Thank you, Senator Wayne. Thank you, Mr. Brady. Maybe-- I got a couple of questions. Number one, when it comes to-- it was stated earlier about all the subdivisions being-- maybe be able to build. There's going to be infrastructure costs that are going to have to be accumulated, prorated out to ratepayers throughout the cities or neighborhoods through their public power distributors because yeah, we can make a whole subdivision solar. On the days that the sun isn't shining, how are those houses going to be powered without existing infrastructure and how is that going to affect ratepayers throughout the whole system and ratepayers that are building these homes to use those facilities on the days that they actually need them?

JUSTIN BRADY: Well, not here representing any of the generators--

DeKAY: Right.

JUSTIN BRADY: --if you will, of electricity, but-- or power, but I would tell you it's-- and obviously, I would see it as increasing the cost. I mean, yes, because you would have a number of places where you would have to still install all that. Typically any backbone, whether you take it in the, you know, electronic-- or electricity or telephone or cable, you have a cost to lay that network and that cost is based on everybody using it. So, yeah, if all of a sudden, they aren't using it, you still have to put the backbone in. People-- users just aren't going to use it. But that's-- I mean--

DeKAY: And you know, the other part-- my other part of the equation for all of this is if you get into a large commercial business or something that wants to use a-- basically a small solar array for their business and it starts impacting net metering within the state, which is within the parameters of LES, OPPD, whoever-- NPPD, whoever, the-- those costs, how are they going to be pro-rated out throughout the ratepayers in this state too for-- because like I said, the infrastructure has got to be there. Those costs have got to be picked up and for the days that they aren't buying generation from those facilities, these-- those facilities are still running for-- on the days that they do need them. So that's just part of the infrastructure cost that I think needs to be put into the whole balance of this bill going forward.

JUSTIN BRADY: No, I understand what you're saying.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next opponent. Next opponent. Anybody testifying in a neutral capacity? Neutral capacity.

BILL HAWKINS: Senator Wayne, members of the Judiciary Committee, my name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm a lifelong Nebraskan and an environmentalist most of my life. I have lived with-- without a lot of electronic energy and so there has been a lot of proponents and opponents on each side with some very good information for you. I started my life as a tree planter in the great state of Nebraska and so I'm a landscaper. And so one of the points of this bill is the issue that it is in the Judiciary Committee instead of the Natural Resources where I've just testified on two solar/wind bills just yesterday. And so that is one of my concerns is it creates a police state and declares that, again, with solar and wind. That is a concern of mine. And as a landscaper and property owner, people aren't always

practical when they demand solar. I've had people move into a neighborhood of huge, giant shade trees and a property covered with shade trees and then want to put up solar panels and they don't have any sun. Or they want to plant prairie grasses and the prairie doesn't grow in the shade. So that gives them to right to cut down trees for several lots. I caretake a historic house over here on 20th and Euclid. Three-story redstone built in the late-- early 1900s. It has 70, 80-foot-wide pines on the north side that the early property owner planted. Right next to the property is a old folks' home, if that's proper or not. But they're in dense shade all the time. If they decide they want to put up solar panels, then we have to take off half the building. And a lot of people don't realize that the sun, at an angle, is down from 30 degrees up to over 90 degrees. We are just coming out of the dead of winter. And so if you put solar panels up against a group of trees and then all of a sudden in the winter, you don't have access to it. And so the other point I'd like to make real quick is-- and I'm green energy as you can be, but solar panels and wind energy is not green. All these solar panels come from China under horrific conditions and those are not produced green. There is a seven-year lifespan and they're-- then they are toxic waste. The same thing with the wind energy. So--

WAYNE: I'm going to ask you to wrap up, Bill.

BILL HAWKINS: I am torn on this issue, but the key on this bill is distributive energy, which is to put solar panels in the town rather than big corporate wind farms. So I'd appreciate your great thought on this bill.

WAYNE: Thank you.

BILL HAWKINS: And I would take any questions.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

BILL HAWKINS: Thank you so very much.

WAYNE: Anybody else in a neutral capacity? Neutral testifiers. Seeing none, as Senator Dungan waives closing, there were a total of 72 letters: 20 in support and 49 in opposition and three in the neutral position. And that will close the hearing on LB49 and we will open the hearing maybe on Senator-- oh. Senator John Cavanaugh welcome-- will open the hearing on LB186. Senator John Cavanagh, welcome to your

Judiciary Committee. Welcome to your Judiciary Committee, Senator Cavanaugh.

J. CAVANAUGH: Thank you. Thank you, Chairman Wayne and members of the Judiciary Committee. I actually have a handout here. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha and I'm here today to introduce LB186, the Unlawful Restrictive Covenant Modification Act. It creates a process to make it easier for landowners to remove unlawful and discriminatory restrictive covenants from their deed. Well into the 20th century, it was a common practice to include racially discriminatory language in contracts for the sale of land. These restrictive covenants would explicitly prohibit the sale on the basis of race, usually prohibiting sales to black people. Together with the practice of redlining, these covenants contributed to the generate-- to generations of housing segregation. Today, these covenants are illegal, but un-- both under Nebraska and federal law. The landmark Supreme Court case, Shelley v. Kraemer In 1948 found that the court-- that a court enforcing racially restrictive covenant violated the 14th Amendment's Equal Protection Clause. The Fair Housing Act of 1968 explicitly prohibits racially restrictive covenants and redlining. The Fair-- Nebraska Fair Housing Act prohibits any specification limiting the transfer, rental or lease of any housing being because of race, creed, religion, color, national origin, sex, disability, family status or ancestry. Despite these prohibitions, many deeds still contain this illegal and unenforceable language, a vestige of time when they were common practices in real estate. Moving these covenants is complicated and difficult process. LB186 aims to make that process easier. It allows landowners to request for the-- request for the county register of deeds to remove the lawful restrictive covenant from a deed. The register of deeds would then record the modification and would allow-- would be allowed to charge a fee no more than $10. The goal is to make it easy and inexpensive as possible. It's important to remember that the apparatus of the state was utilized to enforce this segregation for decades and so the apparatus of the state ought to have a responsibility to remove the vestige of that discrimination from the deeds. LB186 is a small step towards correcting the historic injustice. I ask for the Judiciary Committee to advance LB186 and I'd be happy to take any questions. And I would just point out the thing I handed out to all of you is a example of a restrictive covenant that is actually on a property title that was just searched in the city of Omaha within the last year. And so somebody provided this to me when I brought this bill. So this-- if

you look at this language, this is, this is on titles in Omaha. I actually searched my title of my house because I didn't know and it didn't have one of these. But there are countless residences, titles in Omaha that still have this type of language so it is still very much an issue. And so I'd be happy to take any questions.

WAYNE: Any questions from the committee? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman Wayne, and thanks for bringing the bill. I'm familiar with covenants for a homeowners' association, but I guess there are other covenants. And, and who can impose a covenant on a specific title?

J. CAVANAUGH: Well, yeah, so this-- you know, it would be the landholder. I think for a lot of these happened with-- kind of like homeowners associations back when they would develop land. And in the interest of keeping a neighborhood entirely white, the developer would put this, this language that I handed out onto the deeds before they would start to sell them. And so they would choose to-- they would sell exclusively to white families, but they would make sure that then those families couldn't transfer it to anybody of any other race. And so it's the original landholder. I think-- I mean, really anybody can put it-- you could put something onto a deed. You know, like a lien or something like that. I'm assuming it's just had a-- I think that was the hearing before this was those sort of covenants. But yeah, you can't do this now, but they're still just hanging out there on all of these old titles. And so this is really-- they, they have no current effect other than the fact that if you live in your house and you search your title and it says that you shouldn't be living there, you're not allowed to live there legally, I would find that offensive if that were me and so I would want to take that off my title. And it shouldn't cost you a lot of money and a lot of time to do that.

HOLDCROFT: OK. Thank you.

WAYNE: Any other questions from the committee? Senator DeKay.

DeKAY: Thank you. I apologize if I missed you saying this. This covenant that you had the handout on, is that a new covenant or is that an existing covenant that was just brought forward to you in the last year?

J. CAVANAUGH: So the handout that I circulated?

DeKAY: Right.

J. CAVANAUGH: So that is an example of the covenants we're talking about and it is-- this is on a property in Omaha. When I brought this bill, I just sort of put it out into the ether and said, Hey, does anybody-- has any found any of these? And somebody responded and sent me one from a title search they'd just done. So this is a house in Omaha that somebody I knew just transferred title on and they did a title search when they-- and they looked at the title when they bought the house and it was on there.

DeKAY: Appreciate that. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. We will open with proponents, proponents. Welcome back.

JUSTIN BRADY: Chairman Wayne and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association, for the Metro Omaha Builders Association and the Homebuilders Association of Lincoln in support of LB186. As Senator Cavanaugh explained from their-- from both realtors and homebuilders' standpoint, they look at these and, and they're not enforceable, but all of a sudden you have properties that are being transferred and now you end up in a transaction where a buyer or seller sees one of these on there and says, wait a minute, I don't want it. And then you have this situation where you're saying it's not enforceable, trust me, they won't do anything. And it just becomes a nightmare for some, especially real estate agents to have to explain and that it shouldn't be there and nor-- and they both-- all three associations fully agree it shouldn't be there and so we think a-- having a system to get them removed, removed efficiently would be great. So with that, I'll try to answer any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

JUSTIN BRADY: Thank you.

WAYNE: Next proponent. Welcome. Great shirt, great color.

SPIKE EICKHOLT: Thank you. Same. Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. Thank you, members of the committee. I'm here on behalf of ACLU of Nebraska. I just want to thank Senator John Cavanaugh for introducing the bill. You've got my

statement so I'm not going to read from it. I think Senator John Cavanaugh-- I missed his introduction because I was in another committee, but I think he probably mentioned some of the history that we've had in our state. Basically on a case level, at the federal level, the U.S. Supreme Court found in 1947 these types of restrictive covenants are unconstitutional. And in my statement, I've actually attached some statutes from the Nebraska Fair Housing Act. And if you look at that attachment on the second page, our current law that was passed in 1991. Section 20-317 specifically prohibits restrictive covenants based on race, religion, color, national origin, sex and other suspect factors. And what this bill does is it provides for a process for removing some of those prior restrictive covenants that were imposed or that were in place on deeds before enactment of this law or that may have been somehow drafted either by association or some similar transfer of title that are just simply unenforceable due to our current law. I just want to be on record of supporting this. We want to be on record supporting it. I'll answer any questions if anyone has any.

WAYNE: Any questions from the committee? Senator DeKay.

DeKAY: Since you're new here, can you spell Spike one more time for me?

WAYNE: We even got a chair for him right there.

SPIKE EICKHOLT: Thank you. It's spelled on the chair.

DeKAY: OK. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Any other proponents? Proponents, proponents. Any opponents? Opponents, opponents. Anybody testifying in the neutral capacity? Neutral capacity. As Senator Cavanaugh comes up close, we have two letters for the record: one in support and one in neutral.

J. CAVANAUGH: I don't have anything to add. I just-- in case anybody had any questions, I'd be available, but.

WAYNE: Any questions? Senator Ibach.

IBACH: Thank you very much. So when I was reading Spike's information, if this is already in place, the, the discrimination or-- does, does-- what does this fix?

J. CAVANAUGH: So thank you for the question, Senator Ibach. That's a great question. So the covenants themselves have no effect, like, no legal effect, but they're still on the paper. So if you go and get a copy of your title from your property, it might have a lot of things, you know, listed on it and one of them might be that covenant that I handed out.

IBACH: OK.

J. CAVANAUGH: And so it would still be on the title, it just doesn't have any effect. And so the purpose of the bill is to say, you know, if you don't want that on your title, it should be easy to get it off of there because it's still-- it's a legacy of our discrimination that we've done in this country. And this is one effort to make it easier and efficient and inexpensive for people to at least remove that portion of that discrimination.

IBACH: So it would prevent HOAs from even putting this in the covenant, even in?

J. CAVANAUGH: Nobody can do this now.

IBACH: OK.

J. CAVANAUGH: You couldn't add this to it currently.

IBACH: OK.

J. CAVANAUGH: And it would have no effect. This is just to go back to any property that it was put on before 1948 or 1968--

IBACH: OK.

J. CAVANAUGH: --and say you can take it off.

IBACH: Thank you very much.

J. CAVANAUGH: Sure.

IBACH: Thank you.

WAYNE: Any other question from the committee? Seeing none--

J. CAVANAUGH: Thank you.

WAYNE: --thank you for being here and that will close the hearing on LB186 and we'll open up the hearing on LB394, Senator Erdman. No problem. We'll take a short recess and wait for him.

[BREAK]

DeBOER: Let's go ahead and get started. Senator Erdman, whenever you're ready.

ERDMAN: Thank you. Thank you, Vice Chairman. I appreciate that, Chairwoman. This is the first time I've been on Judiciary. So I'm Steve Erdman. That is spelled S-t-e-v-e E-r-d-m-a-n and I represent District 47. That's nine counties in the Panhandle of Nebraska. So today I came to introduce LB394. LB394 has involve-- it involves eminent domain, which I have been involved with for several time-- several years. I want to share a little story about the first experience I had with eminent domain was in 1999. The railroad that runs through my county had decided to build a new spur to go around a significant increase in their elevation and they were going to use eminent domain to charge-- to change the, the route that would make them more efficient. There were probably 60 landowners involved in that route; 20 or more had decided that they would just go along with the eminent domain request because no one ever beats the railroad. The route was going to go right through the middle of one of my pivots and was going to take out the well that I had spent thousands of dollars to try to discover where it should be. There were a lot of sleepless nights wondering whether that was going to happen or not. So fast forward, there was a bill introduced to restrict some of the eminent domain authority that railroads had. And several of the landowners in our area were busy like I was having calves in the spring. We could not attend the hearing. And so several landowners did make the trip. And my son, Philip, was a junior at the University of Nebraska and I asked him to testify. And when he concluded his comments, the people that had come from my district had suggested that perhaps he should be the senator. And so I told you this story to tell you this, that shortly thereafter he decided to run for the Legislature and a year and a half later, was elected to serve in the 47th District, which is where I'm serving now. So eminent domain is something that my family has dealt with or tried to deal with in the past. And so as I begin to understand what eminent domain meant to my neighbors north of me when they built part of the Heartland Expressway this last four or five years, it's a difficult situation that you're asking someone to sell you something that they don't want to sell. And no matter what price it is, they don't want to sell that. And so as I began to think about

this for the last several months, I began to think there should be some compensation above and beyond just the appraised value of whatever property they're taking. And they're going to construct or they want to construct a four-lane highway that runs past my house. It'll either be on the north side of the highway. They will take an easement on the south side and they will use eminent domain to do that. And if they go on the north side of the highway, they're going to take-- they will take 16 residents-- excuse me, 13 residents. If they go on the south side, it's 19 residents. And so one of the issues that I want to share with you today is what are they purchasing? What are they buying from you that you don't want to sell when they do such a thing? And so I have talked to people who've had their land condemned to build a school, their land condemned for other reasons that are supposed to be public purpose. They didn't want to sell it in the first place. And so what happens is if they don't-- you don't agree with their analysis or their appraisal, then you get a hearing. And I've been to some of those hearings when they did the road north of my house and it went up-- they wind up getting whatever they decided to give them. And so my intention with this bill-- and you can see what it says in there, that if you buy ag land, it should be double the appraised value. And I will share with you why I think it should be doubled. And if you are buying a facility, a house or such a building, it should be replacement cost. And some I'm going to pass out a couple of things I'd like you to take a look at and we will, we will talk about these and then I'll take your questions. But I think this is pretty self-explanatory. Pass that one out first, if you would. Can I have one of these, please? Just give me one. OK. What you're going to see in this first document that I'm passing out, you're going to see a center pivot irrigation system that is near the highway. And as, as you take a look at that center pivot system-- and by the way, I had this in black and white. I had this printed in black and white and the esteemed Chairman of this committee said, if you really want to make an impression, you need to have this in color. So last evening, my computer wouldn't print to the mail room to get it in color, but I figured out with IT how to do this. So, Senator Wayne, thank you for that advice. OK. As you'll notice, the center pivot-- and you can see it in the middle. It's not real plain, but the, the acreage in that center pivot is 125 acres, all right? So I went through the Highway Department's explanation of the land that they were going to purchase. And this stretch is about 18 miles wide and they were going to purchase 200 acres of ag land all the way across that 18 miles. They didn't take into consideration what taking off 100 feet on the front of a pivot is. So I want to pass this second one out

to you. And so that pivot equates, equates to 125 acres of, of irrigated land. And then the second diagram, the second picture I want to show you-- thank you-- is what happens if you shorten up a pivot 100 feet. And so what happens-- and you'll see it in the picture when you get it-- it shortens up the pivot 23 acres, OK? It goes from 125 to 102 acres, all right? So the point is this: that outside of the pivot, that-- what you see if you look at two-- the two together, the difference in the size of the circle is about 23 acres. And so when they purchased the first 100 feet across the south side of that property next to the highway, they shortened the pivot up 100 feet. So they give you the appraised value. The ag land in that area is probably worth $4,000 an acre. So they're going to pay this landowner $24,000 for the purpose of buy-- for the reason to buy that six acres. Remember, he didn't want to sell in the first place. All right, so what happens then is the person has to shorten the pivot 100 feet. That's several thousand dollars to do that. Then he has to change the sprinkler package on his pivot to go from 750 gallons a minute to 650 gallons. That's another $6,000, $8,000. Then he has to change the pump that pumps the water because he can't pump 750. He only has to pump-- he can only pump 650. So it could cost him $10,000 to $15,000 to retrofit his pivot to fit the area that he has once they've purchased that land. So when you look at that outside area there, it's about 20 percent, 18 percent of the total. So it would be like every seven years, raising no crop at all. So you're going to take this land and you're going to pay for the front piece of it, but you're going to put out of production for the rest of the time he owns that property or if anybody else does, the production is lost because they shortened up the pivot. Therefore, that's why I think that that should be double, at least double the appraised price to make up for some of those adjustments he has to make to his pivot as well as the loss of production he's going to have for the rest of the time he owns the property. Now let's talk about the facility, the house that's on this property. And I want to show you this house. This is from the county assessor's website. And I apologize, this one's not in color, but I think it'll make the point just as well. This home is 2,550 square feet. It is a brick home and it's right adjacent-- in your, in your colored map, it's in the corner down to the little red mark there on the left-hand corner. That's where the building is. That's where the house is. So if they take 100 feet off of the front of this quarter, they're going to take that house. They're going to take that house. These people have lived there for a long time. They've spent work growing the trees and doing the things they do there. They don't want to live somewhere else. They want to live here. But they could

possibly have to move and relocate. Now, one other thing I didn't tell you, these people also have a seed corn business and it's in the buildings on the back side of their house. They live near where their seed core business is so they're going to force them to move somewhere else, to move to a location that's not convenient for them. And we're going to pay them the appraised price. So you see the value of the house-- the square footage of the house was 2,551 square feet. And in that area, generally houses are about $150 a square foot. So if you do the math, that's less than $400,000. It's around 380-- $385,000 appraised value for this house. In our area, to build another facility similar to this is going to cost $300. So what happens is they're going to give them the appraised value, 380. They've got to relocate this facility somewhere else and it's going to cost them $800,000 to replace it. Now, they may not have a mortgage now, but they sure are going to if they want to have the same facility somewhere else. Those are the reasons why I think that the compensation for eminent domain needs to be considered at a replacement cost, not just an appraised value. And so you will may hear-- you may hear from people who are in the area where they're planning on building a new lake. Some of those people may own that property for over 100 years. And if you could explain to me how much value there is, how much you can pay them to give up 100 years of tradition where they own that land. So the problem we have is I'm not against eminent domain. The problem we have is the compensation that we use to compensate people to buy something from them that they don't want to sell. And they say that we'll relocate you in a facility, in a facility very similar to yours, but they don't understand that's-- I want to live here. I don't want to live somewhere else. And so you're asking to give that up for the, for the good of the public for the appraised value. And so I ask you if that were your house, what would you think? And so you will hear today from, from counties, from cities, railroads, whomever use eminent domain, you will hear about this is unfair. And I thought it was a very, very good thing that the Department of Transportation gave me the fiscal note of $7.5 million. I was impressed. I was hoping it was going to be $20 million. But what generally happens in these hearings is the departments kill things by a fiscal note. But this is great news for me. So here's why I say that it's great news. It's $7.5 million and they say that's what it could cost the state if we implement this bill. Perfect. Here's why I say perfect, because that is the amount that the general public is going to suffer in losses if we don't pass this bill. That's it right there. That is an underestimate of what it's going to be. So I appreciate that fiscal note. It proves my point. It proves the fact that they're taking this

property from somebody and they know that to replace that property is going to cost $7.5 million more, but they don't care. They don't care. We're going to take your property. Here's what we're going to give you. And even though you're going to have to suck it up and take up the $7.5 million loss, that's what they, that's what they want to do. So I appreciated that fiscal note. I hadn't seen it until today, but I thought, wow, I told Joel, my staff, I said it should be $20 million. So you will hear from all those people that we're going to stop eminent domain and it won't happen again. I mean, we won't be able to use it again. Here's the point. The point is treat these people fairly. The people don't want to sell what they have. You need to take-- you want what they have and you need it to do whatever you need to do, just compensate them, all right? And you'll hear the county come in. They'll say they, they may use eminent domain some time. It could cost them more. When I was a county commissioner who we wanted to move a county road, so what I did, I went to the person who owned the land. I said, Hey, you want to sell me 20 acres on the front of your property? And he said, I might. I said, What do you want for it? He told me. I said, Sounds fair to me. We bought it. It was, it was at least 50 percent more than it was worth on the open market. But he was happy, I was happy and we made a deal and we moved the road. That's how you do it. So if somebody wouldn't want to sell something, then you have to think about what you're going to do next. But I can tell you right now that we take no consideration, zero consideration into what burden and what conflicts we're putting these people in. Because I can tell you right now, these people that are work-- that are living next to the highway, they're scared to death. They're scared to death of what's going to happen. And they shouldn't have to live in fear. It's called private property and it should have some rights that are guaranteed. And so I ask you to advance this bill, bring some, some civil common-sense approach to how you purchase land from people that don't want to sell.

WAYNE: Thank you.

ERDMAN: Thank you.

WAYNE: Any questions from the committee? Senator DeKay.

DeKAY: Thank you, Senator Wayne. Thank you, Senator Erdman, for bringing this. First of all, I got to compliment you on staying within the lines when you were coloring last night. Would you, would you agree with me that there could be different types of eminent domain? Obviously, there's the type that you're visiting about today, talking

about today, where it's-- once it's used for highways, train right-of-ways whatever, it's gone forever. A different type of eminent domain is to put structures there that aren't going to impact the size of the center pivot and stuff, but just gives a company ability to access that if they need to work on a structure or whatever if it, if it comes to that. But as far as physically shrinking the size of a pivot like you-- and I agree with you. In some cases, that's going to be with roads, railroad, lakes, whatever. But if it's not going to impact ability of the land to produce at its highest level on that-- you know, to the full extent of that 125 acres, would there be a different formula that would be able to be used in that situation?

ERDMAN: Senator DeKay, I know I'm not supposed to ask questions, but I, I think maybe, maybe talking about an easement rather than, than purchasing the land.

DeKAY: More, more of an easement, but still some, some cases where easements are in place that they-- in order to get those easements, you have to go through eminent domain. So that's where I'm asking if there's--

ERDMAN: Yep and I think, I think that's a different, that's a different classification. You're not taking the land, you're using it. If you want to build a pole-- put a pole there or something, you're still using-- you're still prohibiting them from using it. So this is my first shot at it, OK? And so when we had that issue back in 1999, what was disturbing about that issue the most was we spent thousands of dollars defending ourselves against an announcement from the railroad. And when we won, we couldn't get restitution. We couldn't get our mon-- couldn't have any opportunity to gather back our money. And so I think it's an-- it's obvious that the landowner needs to have some kind of authority or some kind of ability to defend themselves without having to spend their own money. But as far as an easement goes, whatever needs to be done to make this bill work, I'm willing to try to do that.

DeKAY: I appreciate that. Thank you.

WAYNE: Any other questions from the committee? I will say in seven years, it's probably the best coherent argument me and you-- I've heard from you and that's-- giving you a hard time. He sits in front of me and gives me a hard day every day. I have no questions. I like this bill. We have to figure out how to maybe help out with that

issue, but thank you for being here. Are you going to be here for close?

ERDMAN: I am. And I'm going to sit over there because I can hear over there and I can't hear back here.

WAYNE: Understood.

ERDMAN: Thank you.

WAYNE: First up, proponents, proponents. Pro-- well, there went that great introduction. All right, we'll start with opponents. Welcome.

CHRIS ELLIOTT: Chairman Wayne, members of the Judiciary Committee, my name is Chris Elliott, C-h-r-i-s E-l-l-i-o-t-t. I'm a senior staff attorney from Nebraska Public Power District. I'm here today in opposition to LB394 as written. I am also testifying on behalf of the Nebraska Power Association, which includes all the municipal utilities, public power districts and electric cooperatives providing electric service across Nebraska. Utilities which provide service broadly to the general public have the right of eminent domain. The acquisition of private property through condemnation should always be a last resort for the acquiring entity. Pursuant to the provisions of the United States and Nebraska Constitutions, landowners are entitled to just compensation when their property is obtained for a public purpose. NPPD and our public power peers always strive to obtain necessary land rights on a negotiated voluntary basis. The vast majority of the land rights acquired by NPPD and other electric utilities in the state consist of easements for transmission and distribution lines. For the last 25 years, NPPD has successfully obtained voluntary easements at a rate of 98 to 100 percent for transmission lines. To my knowledge, NPPD has rarely, if ever, acquired feasible title for facilities through condemnation proceedings. The rights acquired for and impacts of building an expressway are significantly different from those needed to build an electric line on the fringes of private property. In the case of ag land, state law generally requires that electric utilities locate lines along section and half-section lines to minimize impact to ag operations. The easements NPPD acquires allows farmers and ranchers to continue using the easement area for cropland and pasture as they had before the public infrastructure was added. LB394, as proposed, would require electric utilities exercising eminent domain to compensate the landowner for the entire fair market value fee simple of the condemned property. We believe the scope and magnitude of compensation, which

would be required by LB394, is not appropriate when easements are required, especially those preserving use rights for the landowner. Finally, the bill creates separate classes of landowners by providing for payment of damages in the amount of two times the fair market value for owners of agricultural land. If there is a legitimate claim to severage damages, that should be addressed under present law. Is it fair to compensate an ag landowner at two times the rate of their next-door neighbors who happen to enjoy simply maintaining a residence on the-- an acreage? Or should a property inside Omaha be compensated at half the rate ag land is simply because their property is not in a rural area? As it stands today, 76-1001 is intended to fairly compensate all classes of landowners equally and equitably for property acquired through eminent domain. We certainly appreciate the impact of eminent domain on the property owner who is the subject of the taking. We are willing to work with Senator Erdman and the committee to help assure compensation required by eminent domain law is fair to all parties impacted. Thank you.

WAYNE: Any questions from the committee? So what is fair?

CHRIS ELLIOTT: I believe the statute that's in place right now is fair.

WAYNE: So if I take a piece of land out of, out of income producing, is that, is that, is that accounting for your just compensation?

CHRIS ELLIOTT: So I, I'm not a professional appraiser, but I did talk to the appraiser that we typically use and he said yes, when he calculates-- they, they have appraisal standards to use and when they-- when the market value of the property is calculated for the purposes of making the offer, the just compensation offer, that is considered, yes.

WAYNE: So why not just make it the standard? Like, four times the income that is produced off of that property. Why, why, why have a arbitrary number of, of-- you can get two, two adjusters and they both come up with a different number.

CHRIS ELLIOTT: So when-- let me, let me try to give an example. So when, when agricultural property is listed for sale, it's listed at market value. That market value presumably includes future production off of that property. And I think when, when you're evaluating on a market value basis, then there is a standard. Market value is the

standard that's used by the appraisers. I think that that is, that is already included in there.

WAYNE: OK. Any questions? Senator Ibach.

IBACH: Thank you very much. How, how often does NPPD pay for eminent domain or how often do you use the eminent domain?

CHRIS ELLIOTT: So as I said, we've tried-- we strive to acquire all of our easements on a voluntary basis, 98 to 1-- it-- depending on the project, anywhere from 98 to 100 percent of our acquisitions are without going to condemnation. So at most, it's been roughly 2 percent.

IBACH: So and I'm just thinking about our own operation. So-- and we have several electric poles that line our, our property as well. So how would-- do you-- would you consider this apples to apples, though, as far as a major highway or thoroughfare and light poles?

CHRIS ELLIOTT: I would not.

IBACH: I don't think of them as the same.

CHRIS ELLIOTT: No, ma'am.

IBACH: OK. Thank you.

WAYNE: What about the residential? What about the replacement value? Because the house may sell for 175, you're not going to build the house necessarily.

CHRIS ELLIOTT: Well, you can't build the same house. And this is just my opinion. You've got a 50-year-old house, you can't build it to the condition that it's in-- a 50-year-old house is in. Of course, new, I would think with the same square footage, same, same floor plan, I would imagine because you have new materials, it would cost more. I agree. I kind of look at it-- I thought about this as Senator Erdman was talking-- was speaking on that. It's similar-- if you, if you have a car wreck, someone-- you have an accident, someone else's fault, their insurance company doesn't pay you as much as we would like it to sometimes maybe for the replacement value of the car. They pay you for the value of the car as it exists at the time.

WAYNE: And I understand that. If that bill was before me, I would--

CHRIS ELLIOTT: I understand.

WAYNE: --want to change that too. At the end of the day, a $1,000 car may be a million-dollar car to that person who's driving it to take your family to-- back and forth to school and work, so.

CHRIS ELLIOTT: I agree.

WAYNE: So again, what about the replacement value?

CHRIS ELLIOTT: Again, I-- we'd be willing to talk to Senator Erdman about this and try to work something out. I can't speak for NPPD or the NPA to saying where-- whether or not they would agree to replacement value. Right now, our standard I think that we use is fair market value. Those were the appraisal standards also. It would probably require the appraisal standards to be changed if that were the case and the law were to be changed on that. But I can't speak for either my organization or NPA right now whether we'd be willing to do that.

WAYNE: That's fair. Thank you. Any other questions from the committee? Seeing none, thank you for being here.

CHRIS ELLIOTT: All right. Thank you.

WAYNE: Next opponent. Welcome.

PAM DINGMAN: Thank you. Good afternoon, Senator Wayne. They don't usually let engineers come to this committee so I'm kind of excited to be here. My name is Pam Dingman, P-a-m D-i-n-g-m-a-n. I'm the current Lancaster County Engineer. Today I'm representing the Office of Lancaster County Engineer, the Lancaster County Commissioners, the Nebraska Association of County Officials and the Nebraska Association of Highway Superintendents. I am testifying in opposition of LB394. Lancaster County Engineering Department regularly completes construction projects such as road grading, road paving, pipe culvert replacement, box culvert replacement and bridge replacements. It has been our experience when replacing old county bridges with new, modern bridges that they are often longer, sometimes as much as 50 percent. Last year, we replaced a bridge on Agnew Road that was actually 90 feet longer than the old bridge. When the re-- when we redesign pipe culverts, we have found that modern design requirements create the need for longer pipes. In addition, we put rock pads at the end of the pipes in order to slow down the water exiting the pipe. This practice keeps our creeks and drainageways from getting wider and deeper and

hopefully can keep our bridges a little shorter too. Lancaster County also currently has projects in design for many widening projects on our paved roads to create a safer, wider modern road cross section. Nearly all of these projects require right-of-way to construct them. I have enclosed an example of a right-of-way tract that is typical for our project, about one-tenth of an acre on each side of the pipe. Nearly all of the additional right-of-way we need for these projects is farm ground. Our right-of-way staff does everything they can to reasonably acquire farmland. However, we still typically have one or two tracks a year that go through the eminent domain process. Each tract goes through eminent domain requires an independent appraisal report of its value, appraiser testimony, court fees, appraisal board costs and Lancaster County staff costs. The cost can easily reach $10,000 per tract. It is our concern that if LB394 passes, nearly all of our right-of-way would go to eminent domain proceedings if the landowners knew they could get double the land value. As previously stated, Lancaster County will purchase around 150 tracts this year in order to complete our construction projects. The majority of the tracts of land are farm ground. Our current budget to purchase these tracts is $162,000. The exhibit I have shared with you shows the cost of the right-of-way with LB394 would reach almost $1.7 million or more than ten times the cost if these all went to eminent domain. The additional cost would be substantial to Lancaster County Engineering Department. In addition, this would create lengthy delays for all of our projects. This bill would recreate-- would create an unreasonable burden on our county construction projects. Thank you for your time.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Next opponent, next opponent. Welcome.

ELAINE MENZEL: Thank you. Good afternoon again, Chairman Wayne and members of the Judiciary Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials and I'm also appearing in opposition for the Nebraska Associate-- I'm sorry, Nebraska Association of School Boards on LB394 for previous-- for reasons previously identified by Ms. Dingman. And I would like to-- this isn't the best way to show you the information or to talk about, but information was asked about market value and some of those issues. So I'll read to you what I was given for information from someone who is much more knowledgeable on this area. And essentially its market value, when calculated under an income approach, capitalizes an income stream into the future. And then the cost is typically figured as a replacement cost, new, less the depreciation. With that said, I think that we would volunteer, as

always, to work with Senator Erdman and members of the committee to perhaps address some of the concerns that he has and hopefully that will help. If there's any questions, I would be glad to answer them.

WAYNE: Any questions from the committee? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman Wayne. Thank you for coming.

ELAINE MENZEL: Thank you.

HOLDCROFT: Do you have any idea how often-- how many, how many counties have had to use eminent domain and how many times?

ELAINE MENZEL: I appreciate you bringing up that question because I had intended to comment to the degree I know. We did do a survey and had about a quarter of the counties respond and the-- there were-- there was only one county that showed that they had used eminent domain during my guess is a year's time frame or something of that nature, so. And they ranged in-- you know, from the larger to the smaller counties. And as I said, it was just a quarter of the counties responded. So therefore, it's maybe not an entire good representation, but at least that's what we found out in short order.

HOLDCROFT: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

ELAINE MENZEL: Thank you.

WAYNE: Next opponent.

KYLE HAUSCHILD: Thank you, Chairman Wayne, the rest of the committee. I'm Kyle Hauschild, K-y-l-e H-a-u-s-c-h-i-l-d. First of all, I'd like to thank you guys for letting me have an opportunity to speak in opposition to this. I represent the Nemaha NRD and the Nebraska Association of Resources Districts. At the Nemaha NRD, we operate and maintain over fifth-- 460 watershed structures that make up the biggest stormwater infrastructure in southeast Nebraska. In the 1950s and '60s, the SES, now which is the NRCS, worked on watershed plans that are some of the oldest in the country, with Brownell Creek located east and south of Syracuse being the third-oldest nationwide. The Nemaha NRD's 460 structures are the most dams that are maintained by any NRD in the state. As these structures start to age and get to the end of their design life, we are tasked with rebuilding or totally

rebuilt-- I'm sorry, rehabbing or totally rebuilding these structures. The standard design life is about 50 years. We have some dams that are approaching 70 years old, which is good that, that they have outlived their design life, but it's time to fix them. Let's see, the time has come, like I said, to start-- to put more work into these structures to make sure that they can make it another 70 years. When we start to look at doing this new work, land rights are always part of what is needed to complete the work. The dams that were built 40, 50, 60-plus years ago were designed to the standards and precipitation needs of that time. Advancements in engineering and modeling will likely change the footprint and the size of these structures to make them as effective as they were when they were first built. I'm asking for help from the Judiciary Committee and the State Legislature to help my district's infrastructure, keep the infrastructure in place and the cost of these effective as possible. The NRDs operate mostly on tax funding and grant opportunities. We ask-- we are tasked with keeping our tax requests as low as possible while trying to provide the public with the highest level of safety and flood protection possible. If LB394 is passed, it will make it almost impossible to continue to provide the flood protection because it will make doing these projects unaffordable and non-cost effective to continue rehabbing to reconstruct these structures. If these structures get to be too expensive to construct and pass the point of repair, they will have to be decommissioned and all flood control benefits will be lost. The Nemaha NRD is currently working on multiple watershed and flood prevention operations, which is WFPO through the NRCS and is formally known as PL 566, plans with NRCS to bring these structures up to today's standards. One part of the plan is to make sure that it's cost effective and work doing these projects. If the land values are doubled with this bill, it'll make it unachievable to complete these structures because they will never check the box of being cost effective. If this bill is passed, it will make the negotiation-- it will take the negotiation power away from the NRDs and will force every project in the eminent domain and will drive the cost of the project up to do-- complete the service to our taxpayers. Thank you.

WAYNE: Thank you for your testimony.

KYLE HAUSCHILD: Yep, I'm through. Thank you.

WAYNE: Senator DeBoer.

DeBOER: Thank you. How often do you-- I mean, is, is most of the-- I would imagine all of the eminent domain that you're exercising is

against agricultural lands or such things? How often do you ever come across a resident?

KYLE HAUSCHILD: Hardly ever. Honestly, when we site a lot of the dams, they're usually away from residents' areas. And in case of us, we're 95 percent rural, but they're mostly-- I mean, not mostly, but a good portion of them are actually located above cities to-- for flood protection purposes above them. And I will say we hardly ever go into eminent domain to acquire most property. It is negotiated. But like I said, the fear that we have with this is if this holds true and this bill goes through, that will take the negotiation out of it because automatically people say, well, you can either negotiate with me or just double the price of what you're going to pay me and we'll go that route, so.

DeBOER: I mean, you could negotiate to pay twice as much.

KYLE HAUSCHILD: And that's possible. But if it came down to that, we would just probably move on to the next structure upstream or downstream to, to locate outside that area. But if everybody's doubling the price of the property, we would never be able to afford to, to put in flood control structures.

DeBOER: OK. Thank you.

WAYNE: Senator Holdcroft.

HOLDCROFT: Thank you, Chairman Wayne. Have you actually done any analysis of how much it's going to cost, additional costs? I mean, can you give me an annual impact?

KYLE HAUSCHILD: We haven't. We're actually just in the first phases of doing our WFPOs. Again, in that Brownell structures-- or Brownell watershed that I, that I talked about, there's about 110 structures and 25,000 acres. Again, that was the third plan that was ever done nationwide. So NRCS kind of-- it was a-- I guess a kick-off project where they kind of were guessing by going on a lot of those structures. Then and now, we're tasked with maintaining them. So they weren't even ours. We adopted them, without a better way to putting it, when the NRDs were formed. But we still have to, to bear most of the cost of keeping those things up and running. So we haven't actually looked at it. Once we get through, we'll have a better idea of what our land costs will be, if we're going to increase those or make them bigger or smaller, decommission, whatever it takes. So we

have not done the initial studies on it yet. We're working on that now.

HOLDCROFT: OK. Thank you.

KYLE HAUSCHILD: Yep.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

KYLE HAUSCHILD: Thank you.

WAYNE: Next opponent.

VICKI KRAMER: Good afternoon, Chairman Wayne, members of the Judiciary Committee. My name is Vicki Kramer., V-i-c-k-i K-r-a-m-e-r, and I'm the Director of the Nebraska Department of Transportation. I'm here today to testify in opposition to LB394. LB394 impacts the state's abilities to condemn property through eminent domain by doubling the price of agricultural land and increasing other expenses associated with acquiring real property. It creates a requirement for the state entity condemning agricultural land for severance damages, which includes replacement costs of all dwelling, garbages-- garages, barns, etcetera, as opposed to the fair market value. I want to take an opportunity just to summarize some of the comments that have been made today rather than going through the rest today. I think we can all agree that eminent domain is a last resort. We want to make sure that we can parity fair market value for the land that's acquired to pay for highways. When we go about the right-of-way process, we typically try as a department to protect the right-of-way in advance, meaning, you know where the roads are going long before they're actually being built that way. It's our intent to protect the landowner as well as the public to make sure that the, the roads go in the right place by engineering standards, as well as making sure that the public has the ability to access them. Typically, those are made long, long in, long in advance. You can go back and see some of the plans for many years ago of what that looks like. In terms of protecting the right-of-way in our fiscal note, what I did when we were putting together the fiscal note is we typically spend about $15 million in right-of-way acquisitions every year. So I doubled that and so-- and then took the 50 percent. So that's where you get the 7.5. If you look at increasing the overall cost and replacing at projected market, I didn't get into that because it's hard to actually estimate what that would look like. And so we understand, we understand the senator's intent, but what I

can tell you is there will be a significant cost to the state that will impact our ability to deliver our program. So I'm happy to answer any questions you may have.

WAYNE: Any questions from the committee? Senator DeBoer.

DeBOER: Thank you, Senator Wayne. Director Kramer, about how much-- do you have an answer about how much of your eminent domain power get used as opposed-- against a structure, a house, a garage, etcetera, as opposed to agricultural land.

VICKI KRAMER: So if you look at residential versus typical just ag land, right, the-- what we acquire every year, it's about 50/50.

DeBOER: 50 percent residential, 50 percent--

VICKI KRAMER: Fifty-- yeah. So if you-- just the way we divide it, 50 percent of what we would acquire in terms of roads is agricultural land.

DeBOER: And when you're doing the negotiation with the landowner for the residential property, what is the measuring stick for that. It's not-- is it replacement value? Is it fair market value? Is it what you get--

VICKI KRAMER: Fair market value and it is a very calculated process. I can't-- I, I don't have the details on it, but I can tell you fair market value, it's a pretty intrinsic process in terms of making sure that we understand what the value of that home is so we can honor it.

DeBOER: And is the value-- I guess-- is that, like, what I'd be taxed on that value or is it a value that--

VICKI KRAMER: I can, I can get that information, Senator, in terms of how we break that down based on the plot of land as well as the structure on that land.

DeBOER: OK. And that would be helpful for me. Thank you.

WAYNE: Senator DeKay.

DeKAY: Thank you, Director Kramer. I'm just thinking out loud. I-- the other night was the first time I was on the new Southern Beltway [SIC] around Lincoln. With that, how much of, how much of that structure was-- what percentage was-- did you have to use eminent-- I know

you're new to this and that was already built, but how many-- do you have any idea how much of that was-- percentage of that was eminent domain and if there was any residential or farm structures or whatever else involved in that process?

VICKI KRAMER: It's a good example because it's greenfield project. I don't have what was actually-- what went into eminent domain, what was just typical right-of-way acquisition and what had been protected. I will get that number for you in terms of what we had to get permission for.

DeKAY: Appreciate it. Thank you.

WAYNE: Any other questions from the-- Senator McKinney.

McKINNEY: So listening to your testimony and I see how you mentioned that capital is a limited source and I was curious, does DOT seek out other funding sources outstate-- outside of state funds, like, federal grants or things like that?

VICKI KRAMER: Absolutely. So about 40 percent of our funding is federal funding. And so if you look at where-- if you're-- just in terms of this particular conversation, right-of-way is typically something that is pulled into our overall project costs so it's not something we budget for outside of the department. It's a project-by-project basis. But absolutely, we look at both state and federal funds for projects.

McKINNEY: So you have somebody in your department that seek-- like, works to figure out what grants are out there?

VICKI KRAMER: Yes, we do. So we have-- in terms of RAISE grants or other additional transportation-related grants, we have a local assistance division that works with local communities as well as within our own team, we have a strategic planning division that looks at how we essentially go in and we'll talk to the federal government on discretionary grants.

McKINNEY: And I asked this question because a couple of years ago in the-- it was either infrastructure bill or ARPA-- I forget which one, but I think infrastructure-- there was money set aside for reconnecting communities that were negatively affected by the interstate system. And I tried reaching out to DOT-- probably should have reached out to you, but I forget who I talked to about the Reconnecting Communities grants because a lot of this money we're

leaving on the table as a state that would help a community like mine and deal with the negative impacts of the interstate system. And I kind of didn't get a real answer as to why you guys were not seeking that-- seeking out that grant. Could you give me some clarification on that?

VICKI KRAMER: So I can speak to the grant question you're talking about. It's a new program and so it may, may have just been in its infancy and not had-- been published in terms of rules and how they were going to do it. I'd be happy to have that conversation with you. I think the-- nationwide we've seen some very innovative projects that create great impacts to that community, start to be funded through the program. So I'd love to have that conversation with you, Senator.

McKINNEY: All right. Thank you.

WAYNE: Well, since we're-- you know, I'm not on Transportation so we don't get to ask you questions, you know? How about that bridge across the Missouri that I've been trying to build for-- OK, I guess there's no answer to that one. All right. No, thank you for being here. One question I have is with the federal dollars, those relocation requirements are different than state. Are you familiar with the difference in what they are?

VICKI KRAMER: What do you mean by--

WAYNE: So if you use federal dollars and you got to relocate somebody, there's, there's federal regulations that would govern over our state regulations. Is there, is there a difference and how do they differ?

VICKI KRAMER: Are you talking about the NEPA process, then?

WAYNE: Yeah.

VICKI KRAMER: I can break that down for you. It's a little bit more complicated. I don't have the breakdown of the right-of-way acquisition and the whole process in terms of the negotiation piece and what has to be followed state versus federal. I can tell you that both processes, we typically have the same public involvement procedures where we talk to the communities and go in and make sure that we're essentially providing the right level of knowledge and getting the right level of comment back. So, for example, if you were going to do a public meeting on a federal project and seek out public opinion to guide which way you were going to go with a project that would essentially impact how many people were relocated, all of that

is dictated by NEPA. And so those public meetings we go into with a very fresh, completely unjaded opinion in terms of what is the right of-- what is the right decision. We let engineering and the public kind of guide us as well as environmental. So I can walk you through that process and make sure I--

WAYNE: Yeah, I think--

VICKI KRAMER: --clearly distinguish--

WAYNE: Well, the crux of the question is, is the-- to the homeowner and I'm thinking more about homeowners. Is there a different cost underneath federal versus state?

VICKI KRAMER: Do you mean do we pay more if it's a state job?

WAYNE: Correct versus a federal job.

VICKI KRAMER: I don't believe so, but I'll double-check that.

WAYNE: OK.

VICKI KRAMER: I don't believe there's any difference.

WAYNE: OK. Any other questions? I can show you that Missouri bridge route. We'll sit down and talk about it.

VICKI KRAMER: I'm very, very familiar with it, Senator.

WAYNE: It's a great idea. It's a great idea.

VICKI KRAMER: Very familiar with it.

WAYNE: It's the best idea I ever had, OK?

VICKI KRAMER: Thank you.

WAYNE: Thank you for your testimony today. Any other opponents? Opponents. Well, wait, you're not supposed to be here. It's not Urban Affairs.

CHRISTY ABRAHAM: Hello, Senator Wayne.

WAYNE: Hello. How are you?

CHRISTY ABRAHAM: I just-- I've missed you so I've come here. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. I don't want to be repetitive. I just want to say we agree with many of the things that were raised previous testifiers opposing this bill. Municipalities, I think, occasionally will use eminent domain for ag land, sometimes for a water well or some other provision that we need to be outside the city. And so we are concerned about that two times amount for ag land. It will ultimately come back to the municipalities and the taxpayers in that municipality to pay for that. So we are concerned about that. Like the other testifiers said, the use of eminent domain, relatively rare for municipalities. Typically a negotiated agreement can be worked out, but if eminent domain is needed, it's usually for something pretty important. So I'm happy to stop there and answer any questions you might have.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

CHRISTY ABRAHAM: Thank you.

WAYNE: Any other opponents? Opponents. Anybody testifying in a neutral capacity? Neutral capacity. Welcome back.

KENNETH WINSTON: Thank you. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Kenneth Winston, K-e-n-n-e-t-h W-i-n-s-t-o-n, appearing on behalf of BOLD Alliance in a neutral position related to LB394. We do strongly support just compensation for any property taken by, by eminent domain and believe that all aspects of property value should be considered. We are-- however, we are concerned about having a formula it creates that requires double compensation. We, we think that this type of formula would create legal issues and could be subject to abuse. Our primary concern is with the use of eminent domain to benefit private for-profit enterprises. We would be glad to work with the committee to develop language to address these concerns. Thank you.

WAYNE: Any questions from the committee? All right, seeing none, thank you for being here.

KENNETH WINSTON: Thank you.

WAYNE: Anybody else testifying in the neutral capacity? Neutral capacity. Welcome.

MELISSA KEIERLEBER: Hi. I'm-- good afternoon, Chairman Wayne and the members of the Natural Resources Committee-- or the-- actually, Judiciary. I was just over at Natural Resources. Wasn't really planning--

WAYNE: We're way cooler.

MELISSA KEIERLEBER: I, I hope so. I wasn't really planning on testifying on this one, but I, I'm-- I think I-- did I spell my name? Did I do all that? I'm Melissa Keierleber, M-e-l-i-s-s-a K-e-i-e-r-l-e-b-e-r. I'm here representing my family that's been farming near Gretna for almost 100 years and we will be severely impacted by the state's desire to build a recreational lake. My family's farming operation has been under threat of eminent domain two other times. And when you're farming in bottom ground, the price you receive is neither just nor fair. Last year's LB1023 put into motion where the state is potentially going to be in the business of building large recreational lakes. Where flood control was the original goal of it is now being completely looked over. There's less than 1 percent flood control in that, in that bill, according to HDR and John Engel. And so now we have this conundrum where the state is going to probably be having to go up against maybe 6,000 acres that are going to be coming up against eminent domain. And it isn't for roadways, it isn't for bridges, it isn't for, you know, telecommunications and all those things. It is strictly for recreation. So when I say it's the bare minimum protection for this bill, it-- we're, we're looking at losing houses, we're looking at losing livelihood, we're looking at losing, you know, grain bins, elevators, all those things. And to try and go replace them, it's almost impossible to do, especially with ground prices being, being what they are now. So I encourage you to look at routes of protecting people for pipelines as well. That's another use that there isn't, there isn't a common use case for those things. So I greatly appreciate your time and I would be happy to answer any questions that you have.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

MELISSA KEIERLEBER: Thank you.

WAYNE: Anybody else testifying in a neutral capacity? Neutral capacity. Seeing none, as Senator Erdman comes up to close, we have received seven letters for the record: two in support and seven opposition. Senator Erdman to close.

ERDMAN: Thank you, Senator Wayne. I am surprised that I didn't get more opposition. I kind of expected Farm Bureau to come in and testify negative, but they're not here. So it was interesting. Some of them said that we're going to offer just compensation. Just a second. I got to turn my hearing aid down. Anyway, we're going to give just compensation. What is just compensation? So you also heard them say that when they buy ag land that the appraisal is assuming-- future production is included in the price. That's not exactly the case. And so when they purchased land on the expressway north of my house, the land was worth about $700 an acre and I think they gave them $900 and so that doesn't make up for many years of production. And most of the testifiers were talking about buying ag land, but this bill also protects structures and is replacement cost for structures. And so the young lady that testified about the lake, those structures are going to be removed and taken away. And rebuilding those, they need to be compensated fairly and I think replacement cost, cost is more than fair. And as you listen to those people today, every one of those who are representing a government agency-- they were paid to be here-- or those people were here asking for protection for a government agency. So what has happened in the state of Nebraska is- and all states basically-- is the government needs to have protection. And so consequently, you surely can't take that away because the Department of Transportation Director said-- and I thought it was kind of ironic. She said in her testimony, that capital [INAUDIBLE]. But since capital is a limited resource, well, what does she think capital is for those people they're taking their property from? That's a limited resource as well. But it's OK for the state, the NRD, whoever wants to take this property, if they have eminent domain, it's OK for them because their capital is limited. But the poor people they're taking it from that don't want to sell their property, we don't care if they're short of capital. It's just what we want. So every one of those people were, were paid to be here. So where were the people that are going to be affected by it? Where were they? They were home working, trying to make enough money to pay their property tax. And so we don't get a lot of representation from the lobbyist group for the landowners and the homeowners that are being taken by eminent domain. So we only have the public power, Lancaster County, NACO, NDOT and the cities. That's it? I thought there'd be more than that. It aggravates me when we have put government and what government should do ahead of the people. I was elected by the people in the 47th District, nine counties, to come here to represent their interests, to try to protect their interests, try to protect their personal property, their personal property rights or private property rights. And I'm fighting against all the

government entities that want to take their property and not fairly compensate them. So what if it costs the state more money to buy the land? What if it costs the county more money? Who cares? OK? The point is, you don't care about those taxpayers. You don't care about those property owners. That's the issue. Do I expect this bill to go anywhere? Probably not. And it probably won't go anywhere because it isn't a priority. But this isn't the only conversation we're going to have about eminent domain. Because when I came here seven years ago almost now, I made a promise to those people that we would work on property tax. And I'm still working on that. And until we get to the place that that's solved, I'll continue to do that. But I'm here to represent the people that sent me here in a way that they would be proud of me to do that. Those people going to be affected by this road that's coming by my house are worried. Those people are hurting. But it's for public purpose, don't worry about it. You can build somewhere else or you can move. It's time for us to put the taxpayer first for once. I appreciate you having me here today. Thank you.

WAYNE: And for the record, there are seven letters: two in support and five in opposition. I think I said seven. Any questions for Senator Erdman? Well, you may get a priority. You never know.

ERDMAN: Thank you, sir. By the way, I wanted to say this. Senator Wayne is the only individual I know-- Senator that came in his first year, was a Chairman the first year and ever since has been a Chairman. And I know of no one else that's done that.

WAYNE: That's why I have a lot of gray hairs. All right. Thank you.

ERDMAN: Thank you.

WAYNE: And that will close the hearing on LB394 and open the hearing on LB379, Senator Conrad. And we'll give a couple of minutes for the room to clear out.

CONRAD: All right. Well, I know how to clear out a room.

WAYNE: Yeah you do. Welcome, Senator Conrad, to your committee.

CONRAD: Hello, Chairman Wayne, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I am here today representing the Fightin' 46th Legislative District of north Lincoln and I am proud to introduce LB379 for your consideration. This measure would allow the nonuse of the seat belt in violation of a driver's duty to ensure children are properly, properly restrained to

be utilized as evidence in motor vehicle accidents. State Statute Section 60-6267 imposes a duty upon the driver of the motor vehicle to ensure that all vehicle passengers ages 8 to 18 use seat belts or other provided occupant protection systems. So in 2022, the Nebraska Supreme Court handed down a decision in Christensen v. Broken Bow Public Schools, wherein a coach was driving a van of high school students, athletes and he had violated this measure in Nebraska Revised Statute 60-6267 by failing to ensure that the kids in the, the van had their seat belts on. And a 17-year-old student athlete was unrestrained and he was a passenger and then they got in an accident and the young person sustained very significant injuries in that collision, injuries which might have been avoided or limited had the driver ensured the student was using his seat belt as required under state law. The Supreme Court held that another portion of Nebraska's seat belt law, Section 60-6273, precluded the consideration of failure to use the seat belt on issues of proximate cause and liability. So essentially, this measure is brought forward because I think the court got it wrong and the court signaled to the Legislature that we have an opportunity to clarify, update and address this issue through subsequent legislation, which is kind of part of our separation of powers and checks and balances. So in talking with different stakeholder groups presession, I had a conversation with the Nebraska Association of Trial Attorneys. We were kind of working through issues that were top of mind for their members in terms of things that we might need to bring up to remedy in this legislative session. This issue spoke to me as a mom and seemed like a common-sense measure to bring forward to ensure that injured families can receive some level of accountability and compensation, as I think the Legislature originally intended. And I think the court misread in the 2022 decision. So with that, I'm happy to answer questions. Also happy to keep running around to all these committees I have this afternoon. And I know there's some really, really smart trial lawyers and other folks here who can, can go deeper with the committee if you so desire.

WAYNE: Any questions from the committee? Can you name that case again?

CONRAD: Yes. So it was Christensen v. Broken Bow Public schools and that was a 2020-- 2022 Nebraska Supreme Court decision.

WAYNE: Thank you. Any other questions? Seeing none--

CONRAD: Also, don't tell the court too loudly that I said they got something wrong.

WAYNE: It is stricken from the record.

CONRAD: Yes. OK. Thank you so much. Thanks.

WAYNE: Thank you. Will you be here for closing or you just don't know? Maybe?

CONRAD: I started to run back, but I can hang around if you need me.

WAYNE: First up, proponents. Proponents. Welcome.

MARK RICHARDSON: Good afternoon, Senator Wayne, members of the Judiciary Committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. I'm here today to testify on behalf of the Nebraska Association of Trial Attorneys in support of LB379. Senator Conrad hit on it. This is a legislative fix bill to a Supreme Court Opinion that came down in the Christensen decision. This is a simple focus. This is keeping children safe and giving those children and their parents recourse to hold those accountable who don't and that's what this seeks to do. We think that the Nebraska Supreme Court ignored some fairly clear legislative intent of this statute, that by its black letter-- we acknowledge the black letter of the statute that the Supreme Court relied upon says you can't use this type of non-seat belt use as evidence of negligence-- of comparative negligence. But it totally missed the context of the fact that, that was in regard to the adult seat belt bill. It came in at the same time as the adult seat belt bill, which said, OK, now we've got-- we're going to mandate the people have to wear seat belts. How are we going to use evidence of nonuse of seat belt in a personal injury action when somebody is hit by somebody else? A seat belt has never-- you'll hear me say this again later. A seat belt has never caused an accident. And so the Legislature rightfully came down and said, wait a second, you can't use a seat belt as evidence of comparative fault. It was the other driver's fault. What a seat belt does potentially is it mitigates damages. That's a different defense: mitigation of damages. And the statute, as it reads right now, says that's how you use it. You use it as mitigation of, of damages. The Nebraska Supreme Court in Christensen took that and said, well, it's not just mitigation of damages. It's-- it actually precludes any sort of claim being brought by, by parents of children who have had injuries like this. And I just-- I, I come at it the same way as Senator Conrad did, which is I have an eight-year-old. And if I put my kid in a car with somebody-- with another adult and that adult said eh, in this, in this car, we don't wear seat belts, I would expect that if my car-- if my, if my

kid is injured in a motor vehicle, motor vehicle collision and they're ejected out of that vehicle and experience significant personal injury, I would expect I would have recourse against that. I cannot fathom the public policy argument behind why you wouldn't hold somebody accountable for that situation and that's what this legislation is there to-- intended to fix. And we think it does it well. I'm happy to answer any questions you've got.

WAYNE: Any questions from the committee? Senator Ibach.

IBACH: I have one. Thank you very much. So when you're litigating accidents or-- and, and talking about what happened, how it happened, etcetera, do, do you use seat belts as evidence? Do you say the child was not restrained or anybody that might have been ejected from the vehicle were not wearing restraints?

MARK RICHARDSON: The question of whether somebody was belted in comes up in every single case I've ever been involved in. The current statute that we have, when used appropriately as a mitigation of damages type defense, it, it fits where it's supposed to fit. It says that if you failed to use your seat belt, that can be used against you to take your damages, which might otherwise be up here and bring them down to here. But it will-- it limits it. It allows you to reduce them by 5 percent. Again, that's an acknowledgment that the person that actually caused the collision is the reason you're injured. You didn't get injured because of your seat belt. Your seat belt was simply-- would have been a mitigating factor. So, yes, Senator, it comes up in every case that we've had. Now, does that come in front of the jury in every case that we have? No, it doesn't, largely because of, because of the statute that we have right now. We just think that statute has now been taken a step beyond what it was ever intended to do and that's what this bill seeks to fix.

IBACH: OK. Thank you.

WAYNE: Any other questions from the committee? Senator DeKay.

DeKAY: Back to the Broken Bow case just for a second, I remember the incident. What I don't remember for sure, was that a single car or was that a multi-car accident?

MARK RICHARDSON: That was a multi-car accident. There was another driver that was involved that ultimately, I believe, was held

responsible for that. But this was the two causes of action arising out of the same incident.

DeKAY: OK. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

MARK RICHARDSON: Thank you, Senators.

WAYNE: Any other proponent? Proponent. Proponent. Seeing none, opponents. Opponents. Come on up, opponents. Welcome.

PATRICK COOPER: Thank you. Good afternoon, Chairman Wayne and members of the committee. My name is Patrick Cooper, P-a-t-r-i-c-k C-o-o-p-e-r. I am a practicing attorney. I have a civil litigation practice for approximately the last 20 years and I'm a member of the Nebraska Defense Counsel Association. And we oppose this bill not because we disagree with the fundamental premise of the bill, but rather because we think this bill doesn't go far enough and would create an unfair statutory framework. We all agree about the importance of seat belt use and I think the proponents of LB379, as well as the proponents of the competing bill, LB472, agree on that point. And both bills really support the notion that seat belt evidence should be more broadly admissible in civil litigation to prove issues of liability and proximate cause. And that juries are entitled to hear those sorts of facts when they're sorting out the issues that are unique to each and every individual case. But this particular bill, LB379, really betrays its own logic. It would suggest that evidence that a-- you may prove that a driver was negligent by failing to ensure that passengers were wearing a seat belt, but you would be prohibited from proving that same driver was negligent for failing to wear his or her own seat belt. This bill really says we would allow seat belt evidence in some cases, but only for certain people and only for certain plaintiffs. And while we agree that seat belt evidence should be more broadly admissible in litigation on issues like liability and proximate cause, we think this bill doesn't go far enough because it only makes that evidence available to a small group of litigants rather than to all Nebraskans who face these issues when they litigate these types of cases. I would just point out that the goals that are sought to be achieved by this particular bill would all be achieved by the passage of the competing bill, LB472, which we think provides a more balanced approach to this issue and makes this type of evidence available to all litigants, not just a select few.

I'm happy to answer any questions that any members of the committee may have.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

PATRICK COOPER: Thank you.

WAYNE: Next opponent. Seeing none, anybody testifying in a neutral capacity? Neutral capacity. As Senator Conrad comes up close, we have no letters for the record. Senator Conrad to close.

CONRAD: Thank you, Chairman Wayne, and thank you, committee, for your thoughtful questions and to the testifiers, opponents and proponents who came out today. There's no doubt that Senator Geist and I have kind of both identified an area that might need a little bit of work by this Legislature moving forward. Our solutions are perhaps a little bit different so that will be a policy choice for the committee to take up. I think there's no question her approach is a bit more expansive, mine is a bit more narrowed and really focused on children. So I am happy to work with Senator Geist, proponents, opponents in this committee to figure out the best path forward because I think we're all feeling like that Supreme Court case was, was perhaps really an indication to the Legislature that we need to, to address this matter to ensure fairness for, for all litigants and all Nebraskans. Yeah, Senator--

WAYNE: Thank you. Any-- Senator, Senator DeKay.

DeKAY: So just to make it clear, you and Senator Geist are willing to work together to combine both of these bills into one?

CONRAD: You know, I haven't had a chance to ask her about that yet, but I know that she's usually very collaborative in her approach so I would be happy to follow up after the hearing if she's not here today or just to keep putting our heads together to figure out the best path forward. Yeah.

DeKAY: All right, thank you.

CONRAD: Absolutely.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

CONRAD: Oh, oh.

IBACH: I just have one really easy question.

WAYNE: Senator Ibach, Senator Ibach.

IBACH: Thank you, Mr. Chairman. Children are up to age 18, correct?

CONRAD: I think that's right, yes.

IBACH: OK. Thank you.

CONRAD: Yes.

IBACH: Thank you, Mr. Chairman.

WAYNE: Any other questions? Seeing none, thank you for being here.

CONRAD: Very good, thank you.

WAYNE: That will close the hearing on LB397 and now we will turn to LB472 where I am going to introduce the bill on behalf of Senator Geist. Welcome, Ms., Ms. Jacobsen.

MARY JACOBSEN: Thank you. Thank you, Chairman Wayne, and good afternoon, members of the Judiciary Committee. For the record, my name is Mary Jacobsen, M-a-r-y J-a-c-o-b-s-e-n. Last year, traffic deaths in Nebraska increased by 15 percent. The state has not seen this many traffic deaths since 2007. Speeding, distracted driving and failing to use seat belts were the main causes for people to lose their lives. According to a study by the Nebraska Highway Safety Office in Nebraska last year, only 76 percent of drivers were wearing seat belts. This is a 10 percent decline in seat belt use since 2017. As of 2021, Nebraska's seat belt use was the-- was in the bottom five states in the nation. seat belt use is the most effective way to prevent death and serious injury in a crash. Data from the CDC and National Highway Traffic Safety Administration show seat belts reduce the risk of death by 45 percent and reduce the risk of serious injury by 50 percent. People who don't wear seat belts are 30 times more likely to be ejected from a vehicle during a crash. More than three out of four people who are ejected during a fatal crash die from their injuries. Current law prohibits the admissibility of evidence at trial that a person in a motor vehicle was not wearing an occupant protection system or a three-point safety belt, a.k.a. seat belt. This group prohibition on the admissibility of evidence of seat belt use has been

in place for 38 years, or since 1985. This was put in place when our understanding about the importance of seat belt use was very different and not informed by the data I shared with you today. Due to the updated data, we have all seen the campaigns by Nebraska and the federal government to encourage people to wear their seat belts. LB472 would eliminate this prohibition and allow as evidence when any person in a motor vehicle was not wearing an occupant protection system or a three-point safety belt to be admissible as evidence in any civil proceeding. Science and expectations surrounding seat belts have changed immensely over the last 38 years. Occupants of a motor vehicle in Nebraska are required by law to wear a seat belt. This prohibition in Nebraska's statute has outlived its usefulness and purpose. It prevents parties to a lawsuit from presenting all relative-- relevant evidence to a jury. Increasing seat belt use and modifying this prohibition to be more in line with modern rules of the road is critical to reduce injury and save lives. I'd encourage the committee's support of LB472. There will be a few other testifiers following me that will be available to answer your questions.

WAYNE: Thank you. We ask questions of staff here, so. First proponent. First proponent.

KENT GRISHAM: Oh, good afternoon, Chairman Wayne, members of the committee. My name is Kent Grisham, K-e-n-t G-r-i-s-h-a-m, and I appear today as the president and CEO of the Nebraska Trucking Association. For reference, the NTA is one of the largest state trucking associations in the country, with more than 900 members representing motor carriers in Nebraska of all sizes and types. But we are more than just the four higher motor carriers. My members are businesses of all types, farms and ranches that run trucks as part of their operations, as well as companies who fuel service and equip them all. My members make up a large part of the trucking industry, one that demonstrates its essentialness every day. Every one of us benefits from a safe and successful trucking industry. That is especially true in Nebraska, where about half of all of our communities receive everything they need by truck alone; no rail, marine, air or pipelines, just trucks. With that background information in mind, I come before you today in support of LB472 and we sincerely thank Senator Geist for bringing it forward. It is not fair that the owner of a motor vehicle, whether a commercial big rig or a personal minivan, should be held fully liable for the injuries to another driver when that other driver was negligent themselves when it comes to using a seat belt. Yet in Nebraska, that unfairness is exactly what we have written in the statute. The unlawfulness and

negligence of not using a seat belt is a choice every driver in Nebraska can make for themselves. We need to stop supporting that bad choice by allowing plaintiffs to claim higher levels of damages after an accident when the severity of their injuries could have been dramatically lessened with a simple click. Judges and juries should be allowed to consider that evidence and decide what is fair in a courtroom. There is ample data that shows damage awards have grown at a rate far greater than inflation, including the inflation rate for healthcare. There is, of course, of course, a clear correlation between that data and the cost of insurance for motor carriers. The average cost of truck insurance premiums rose 42 percent from 2010 to 2018, with the most dramatic cost increases hitting the small fleets: the one-and two-truck grain operators, the cattle life-- and livestock transporters and the owner-operators. In fact, in terms of the cost per mile for insurance premiums, fleets under 25 pay quadruple the rate of fleets over 1,000 trucks. But in Nebraska, those small fleets and owner-operators make up 85 percent of the trucks being operated in our state. We know that these issues are about more than costs. They are about people, many of whom have legitimate needs and claims following an accident. The trucking industry is not one that shirks responsibility ever. We are only asking for fairness in terms of determining damages following an accident by allowing judges and juries to consider the use of seat belts. LB472 brings about that level of fairness and we urge its passage. Thank you and I got it in under the red light.

WAYNE: Very good. Any questions from the committee? So you think if this bill were to pass your premiums will go down?

KENT GRISHAM: I don't think premiums will ever go down, but we can control the increases that we see. We can start as-- beyond this issue, many issues, taking a look at the causes that are driving insurance rates, the way that, that port damages are being assessed. All of those things are worthy of consideration and this is a great start.

WAYNE: OK. Thank you. Seeing no questions, thank you for being here.

KENT GRISHAM: Thank you, sir.

WAYNE: Welcome.

ROBERT M. BELL: Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Robert M. Bell. Last name is spelled

B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation. I'm here today in support of LB472. The Nebraska Insurance Federation is the state trade association of insurance companies. The federation currently has over 40 member insurance companies. Member and companies write all lines of insurance and provide over 6,000 jobs to the Nebraska economy and over $14 billion of economic impact to the state on an annual basis. Perhaps most importantly, Nebraska Insurance Federation member companies provide high-value, quality insurance products that protect Nebraskans during difficult times. As you've already heard, LB472 would allow the admissibility of seat belt use in a civil action. The federation contains members who write personal and commercial auto insurance and this is a change that is long overdue in Nebraska. I'm going to highlight three points for your consideration. First, Nebraska insurance companies support any public policy that encourages seat belt use. Driving is the single most dangerous thing that most Nebraskans do on a daily basis and all Nebraskans should take steps to mitigate the risk involved. Buckling your seat belt is one of the simplest and most effective ways to mitigate that risk, particularly with modern passenger restraint systems. If an individual chooses not to mitigate that risk and is involved in an accident, there should be consequences, which leads to my second point, fairness. In Nebraska, you can be ticketed for not wearing your seat belt, in part because this Legislature has decided that wearing a seat belt is important. It seems fundamentally unfair to not be able to admit such evidence to a court. It should be the providence of the court or the jury to assess the evidence and distribute both fault and damages. It is a mistake not to wear your seat belt and that needs to be part of the case. My final point, will LB472 reduce awards to victims who do not wear a seat belt? Very likely, yes. Auto and liability insurers will have less exposure, no doubt. But there is always other insurers on the other end as well involved in the financing of the injuries and damages such as health insurers, disability insurers and other liability insurers who are also federation members. In fact, going into our legislative meeting, I was unsure of what the position of the federation might be. But all insurers are invested in seeing less harm on the roads and support policies that encourage both highway safety and personal responsibility. For these reasons, the Nebraska Insurance Federation supports LB472. Thank you for the time and the opportunity to testify.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

ROBERT M. BELL: You're welcome.

WAYNE: Next proponent. Welcome.

PATRICK COOPER: Thank you, Chairman Wayne, members of the committee. My name is Patrick Cooper, P-a-t-r-i-c-k C-o-o-p-e-r. I'm an attorney with a civil litigation practice and I'm here today on behalf of the Nebraska Defense Counsel Association, which is in favor of LB472 because we believe this bill represents progress that has been made in safety over the last several decades and provides a balanced approach to the issue of admissibility of seat belt evidence. By way of brief background, the current seat belt statute was enacted in 1985. So for the past 38 years, juries have been prevented from hearing evidence of seat belt nonuse when considering issues of liability and proximate cause in litigation. But a lot was different in 1985 obviously. In 1985, people smoked on airplanes. Children did not wear car restraints. Many Americans didn't wear seat belts. And at that time, seat belt legislation was viewed as government intrusion or government overreach. And fortunately, times have changed and there's now broad recognition about the importance of wearing seat belts and how that is the best way to prevent serious injury in motor vehicles. But unfortunately, our seat belt law is still stuck in the 1980s and we think we should bring this statute current to more accurately reflect those changes in social norms and societal views that have developed and evolved over the last 40 years. Although we encourage our friends and family members to buckle up, when they sit on juries, they're not allowed to hear about whether motorists were, were buckled when they're evaluating issues of liability and proximate cause. And we believe seat belt evidence should be treated like any other fact issue. We should trust juries. We should trust the fact finders. We should trust the process and allow them to sort out the significance of failure to use a seat belt in a particular case with the benefit of the unique facts and circumstances presented by that case. And I would just point out one more thing before I run out of time, the, the current statute allows seat belt evidence to be used on a very limited basis with respect to a mitigation of damages defense. LB472 would correct really a fundamental contradiction between the current statute and existing state Supreme Court precedent. The current statute allows the, the jury to give up to 5 percent consideration on mitigation of damages. But our state Supreme Court has stated quite clearly that mitigation of damages is a defense that only looks at post-injury conduct. May I finish, Chairman? Thank you. It only looks at post-injury conduct and it's not supposed to look back at the conduct of the injured party prior to the injury or prior to the breach by the

other party. And so the current statute as worded, which allows this evidence in a very limited way to be used on mitigation of damages, is completely inconsistent with how our state Supreme Court has defined the contours of that particular defense. So we ask that you vote for progress and vote for fairness and support LB472.

WAYNE: Thank you. Any questions from the committee? So I got one. I mean, isn't it true that you-- insurance and insurance defense have their own special rule when it comes to rules of evidence and what juries can hear?

PATRICK COOPER: I guess I don't understand the question, Chairman.

WAYNE: Well, you can't mention insurance in the jury trial.

PATRICK COOPER: That is true.

WAYNE: You can't say they were insured.

PATRICK COOPER: That is true.

WAYNE: So if we're going to be progressive, why not let the jury see-- hear everything since you trust the jury so much like I do?

PATRICK COOPER: The difference is that whether a party is insured or not isn't relevant to the issues of the party's respective negligence and the damages that were sustained by a party. This bill would allow relevant evidence in front of the jury so that the jury can actually consider the respective fault and compare the negligence of the various parties.

WAYNE: You don't, you don't think whether it's a company or individual is relevant to what goes on in those proceedings and in the jury's mind?

PATRICK COOPER: Well, we have a pattern jury instruction that our courts give that specifically inform the jury that they're not to consider whether it's an individual or a corporate party and they're to, to give the same consideration regardless of that fact. So I don't believe that is a relevant consideration.

WAYNE: We can change that though, right?

PATRICK COOPER: You certainly could enact a statute that, that says courts should treat corporations and people differently.

WAYNE: No, I'm just saying maybe we should give the juror all, all the folks: who's actually been sued, who's actually being held accountable. Let's just give them everything.

PATRICK COOPER: Well, and with respect to the issue that's before us today, LB472, we agree with you that the seat belt evidence should be before the jury and that that evidence should be more broadly admissible.

WAYNE: Thank you. Any other questions? Seeing none, thank you for being here today.

PATRICK COOPER: Thank you.

WAYNE: Any other proponents? Any opponents? Should have just had a joint hearing. I'm here on opponent and proponent.

MARK RICHARDSON: Senators, my name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. I'm here testifying in opposition to LB472 on behalf of the Nebraska Association of Trial Attorneys. And appreciate your questions to Mr. Cooper. I have litigated with him on several occasions and I can attest to the fact that he's very hard to pin down on some of those questions so I feel your pain on that.

WAYNE: He's an attorney. He's an attorney. He's not supposed to.

MARK RICHARDSON: I, I get it. Any, any indication that juries aren't allowed to take in-- that, that somehow we're ignoring seat belt use is not the current state of the law. What we're saying is seat belts have never caused a collision. When a drunk driver crosses the line and runs head on into a car, the seat belt had nothing to do with it. And so for this legislation, the way this bill is written, it says you get to use the seat belt information as a potential proximate cause of what happened to you. That is not right. This does feel more like a mitigation of damages question. And Mr. Cooper was exactly right. That's where we have this trouble because it-- you-- seat belt use precedes the actual collision so it doesn't fit nice and clean to this mitigation of damages effort. But that's really what it is. And what the Legislature decided rightly in 1985 is that we're not going to say the lion's share of the punishment goes on the person for not wearing their seat belt compared to the drunk driver that hit him. It allows people-- it allows defendants, it allows drunk drivers to muddy the waters and make things confusing for a jury is what is a proximate cause and what isn't and what's mitigation of damages and what, and

what isn't? And the way it's set up now gets it right. You're allowed to-- if you don't use your seat belt, you are going to be penalized for it. But you're only going to be penalized for-- to a certain extent. I-- if you take this away, you're, you're going to end up with biomechanical experts in every case where the seat belt is not going to be used. You're going to have expenses for, for these litigation efforts are going to skyrocket. You're going to see fewer settlements. You're going to see more trials because there's going to be more ad-- it's just going to be a muddier picture and harder for people to agree what happened and how it should result. The statute, as it exists right now, works. It's not out of date. And I feel-- every time I get up here, I'm up here arguing for a bunch of people that are-- don't have a collective. They're all injured Nebraska citizens, both past and future and I'm up here arguing against multibillion-dollar corporations and, and companies. And, and at some point, you've got to protect the victims. That's what this-- that's what the current statute does. And instead, what the-- what this bill proposes is turning that around and saying, no, we're going to side with the drunk driver and we're going to allow the drunk driver to attack the victim and we don't think that's right.

WAYNE: Thank you. Any questions from the committee? You're thinking, you're thinking.

DeKAY: Yeah, I'm confused. We got people--

WAYNE: Senator DeKay.

DeKAY: --testifying on both sides of almost the same bill, I mean same type of bill.

MARK RICHARDSON: And, and, and, and hopefully I can-- if you'll allow me, I can explain what we view to be the difference between those two. I mean, one, it comes down to our bill is about protecting the kids. It's, it's about protecting direct allegations of negligence, of wrongdoing by somebody towards a third party. So if it's me, if I'm the one that's involved in the collision and I'm the one that's driving, those are my actions. Those are my decisions to not mitigate my damages. If I have made that decision for a child who I'm in charge of, that is a very different liability analysis and I should have an extra responsibility to that child. And if I fail in that regard, I should be held accountable. I think there's a clear distinction between those two and that's why we're supporting LB379 and opposing LB472.

DeKAY: With this-- when was the seat belt law enacted in '83, '84, '85, somewhere in that--

MARK RICHARDSON: '85, I believe.

DeKAY: '85. So it's the law that we're supposed to be wearing our seat belts. And I agree with you 100 percent that in the case that was presented in last testimony, that kids should be protected. Doesn't the responsibility for those kids kind of land on the driver of the vehicle or who's ever in charge of those kids at the time or passengers, regardless of it's kids in the vehicle? Do they bear any responsibility for that?

MARK RICHARDSON: That was the entire Christensen case. It was the driver should have had a more-- should have had responsibility to make sure that kid is buckled in.

DeKAY: So I guess where I'm confused is we're, we're trying to look out for the passengers and who's ever not wearing a seat belt is essentially breaking a law has been put in place since '85. They should bear some of the responsibility for breaking that law. But it still doesn't take away-- and hopefully not every case is a drunk driver, but it still doesn't take away the opportunity to go to court with the drunk driver on the charges, if any-- whatever, those acts.

MARK RICHARDSON: And I think that's right. And I think if you look at the Christensen case, it is a perfect example. There was another car involved in that and that other car is the one that crossed the center line in that case. If you were going to compare the two negligences between the guy that crossed the center line and the person that failed to buckle the kids in, I don't think there's a real strong comparison there. I think you're going to find everybody is going to agree the person that crossed the center line is more negligent there. But that doesn't mean that the, the, the grown-up that was in charge of these kids wasn't negligent. And so our-- the LB379 bill addresses that situation. But it's not the same thing as coming in and saying-- being able to argue, wait a-- for that same truck driver in that same situation to come in and argue, actually, you, driver, you're more responsible for your own injuries. I didn't cause those injuries by crossing the center line; you did. That-- it's a very-- it's a fundamental difference in comparative fault analysis, which is what LB472 would do versus the current state of the law, which is it speaks more in terms of mitigation of damages, which again does reduce-- there are consequences for that, for that person that didn't wear

their seat belt. They get their damages lowered. Now, if we want to sit here and say 5 percent is not the right number, I-- we'll work with the senator on finding the right percentage. But it should-- there should never be a situation where it's determined that the failure to use the seat belt was more of the cause of their-- of, of the collision and the consequences than the person who injured them in the first place. And that's what LB472 opens the door to.

DeKAY: Where we're at, you know, if somebody crosses a line, whoever it is, passenger, motorcycle, semi, whatever, they're going to have to bear some responsibility because of the accident is taken, obviously. But the other part of it is, is it still goes back-- and hopefully it's not a life-taking event. But if, if it's an injury, those, those-- and those injuries could have been prevented by them not having a seat belt on, doesn't that fall on the responsibility either (a) it's a grown-up in a vehicle that chose not to wear that seat belt, or (a) it's a person in charge of the minors that-- does any of that responsibility fall on them?

MARK RICHARDSON: It does fall on them and that's why this-- the current statute allows for the mitigation of damages. It allows for that percentage that they can recover to be reduced. But if you, if you turn it into what LB472 is, which is a peer comparative fault, and you would have a situation where you have a jury who comes in and says, well, it's 50/50. Yeah, 50 percent of the responsibility for the collision was on the other driver. The 50 percent was because you didn't use your seat belts. In that situation, you'd recover zero. On a comparative fault in Nebraska, you would recover zero. And that can't be-- the seat belt didn't cause the collision. The seat belt didn't cause the injury. The force of impact from the other vehicle did. And this is a-- that's a small mitigation of damages issue that should never wipe out somebody from recovery. And that's what LB472 would do and that's why we're so strongly in opposition to making it as expansive as they want it to be made. We're open to working on it. We're open to improving it to make sure it reflects reality. But it shouldn't be a situation where you can just wipe somebody out because somebody else's negligence hurt them.

DeKAY: And, and I agree with you on a lot of it. Still, the extent of the injury still might fall some on the person or minor or whoever it is at fault. That responsibility still falls on who's ever in charge, whether it's a consenting adult, whether it's a-- so, you know, the extent of the injury, some of that (a) yeah, the-- it falls on the fault of whoever caused the accident but the other part of it, if, if

the extent-- it's not going to eliminate the accident or the injury, but it's still going to impact on how bad that person was hurt one way or the other going forward.

MARK RICHARDSON: And-- yes, sir, and the current state of that statute accounts for that and says if you do that, if you don't have your seat belt on, you're going to-- you're not going to be able to recover the amount of damages that you otherwise would have been able to recover because you failed to wear your seat belt.

WAYNE: Senator Ibach.

DeKAY: I'm done. Thank you.

WAYNE: Oh, I just heard a long pause so I thought you were done. I apologize.

DeKAY: That was my brain thinking.

WAYNE: We'll come back to you. Senator Ibach.

IBACH: Thank you. So this is really simple, but-- and everything that you've explained to us is great. But if safety is the issue and we're going to use that to litigate, shouldn't we encourage all occupants of a car to wear their seat belt?

MARK RICHARDSON: Absolutely and I think we do. It's why you get punished if you-- why you're not able to recover the full amount of your damages if you don't wear your seat belt. The statute already says that. So you're abs-- that's, that's, that's absolutely true. I will say, just from a practical standpoint, as I was sitting back there listening to that argument about we should encourage people, I have a hard time believing that anybody gets into a vehicle-- and, and I understand they might get in the vehicle and think, I better put my seat belt on because if a police officer sees me, I get pulled over. I have a hard time buying the argument that anybody's ever gotten into a vehicle and said, you know, I better put this seat belt on because if I get-- if somebody else crashes into me and I try to sue them later on, I might not be able to recover the full amount of my damages. I will-- I guarantee you nobody's ever had that thought when they get into a vehicle. That's not a practical, practical way to think about what we're trying to accomplish with, with-- which it basically is an evidentiary law in, in civil litigation.

IBACH: Thank you. Thank you.

DeKAY: Senator Wayne can go ahead.

WAYNE: I mean, I might be thinking about this wrong so I may ask the wrong question. So, like, let's take somebody who has diabetes. Clearly, they, you know, weren't eating too healthy, weren't doing those things, but they get an accident and they get a cut and the wound doesn't feel, right? So you have to get another surgery, another surgery. I mean, don't we have a principle you-- you know, you find the person as they are?

MARK RICHARDSON: That's the eggshell plaintiff rule.

WAYNE: Right.

MARK RICHARDSON: And that's exactly what it is. It is you, you take the, the injured person as you find them. You don't get a break. For example, if I'm perfectly healthy, but the person next to me has that condition, if their injuries are worse, even, even though they're in the same exact collision and would have otherwise had the same exact injuries, but their medical bills are worse because they had all these medical conditions, you're responsible for that person and everything that goes along with them. That's called the eggshell plaintiff rule and that is the standard--

WAYNE: And that has been around--

MARK RICHARDSON: --in Nebraska.

WAYNE: --I mean, since the beginning of time, right?

MARK RICHARDSON: Yep. Common law.

WAYNE: So I mean, we're kind of saying the same thing, right? Like, just because the person didn't have the seat belt on, you don't get to determine-- it doesn't supersede everything else. That's what you're trying to say.

MARK RICHARDSON: Right. The principal reason the person is injured is because somebody else ran into them, not because they weren't wearing their seat belt. A seat belt would have only limited the damages. It wouldn't have eliminated the damages.

WAYNE: And you don't get to stand up or the other side doesn't get to stand up in court and say, but for their diabetes, that extra surgery wouldn't have happened. Therefore, it's, it's not relevant, right?

MARK RICHARDSON: That's correct.

WAYNE: I'm asking the judge--

MARK RICHARDSON: And I will say right now with the statute the way it is, if you go to the courtroom and you don't agree to reduce your damages by 5 percent, then you are allowing the other side to put on evidence of what the seat belt use would have done. So, I mean-- and there is, there is a way right now-- I mean, practically speaking, you're, you're going to go and say, OK well, we'll take the 5 percent discount and clear up that confusion for the jury.

WAYNE: Right. Any other-- you're thinking so. You want to take a recess and come back and ask more questions? Thank you, seeing no questions-- no other questions. Thank you for being here.

MARK RICHARDSON: Thank you, Senators.

WAYNE: Any other opponents? Opponents. Opponents. Anybody testifying in a neutral capacity? Neutral capacity. Seeing none, we had one letter of support for the record and that will close the hearing on LB472 and the hearings for today.